

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NIKKI NELSON**  
Claimant

**THEISENS INC**  
Employer

**APPEAL 17A-UI-08425-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/23/17**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 7, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for dishonesty in connection with her work. The parties were properly notified of the hearing. A telephone hearing was held on September 5, 2017. The claimant participated and testified. The employer participated through Risk Management/Loss Prevention Manager Dan Connolly. Also present on behalf of the employer, but not testifying, was Human Resource Administrator Heidi Bergfeld. Employer's Exhibits 1 through 7 were received into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a sales associate from September 6, 2012, until this employment ended on July 18, 2017, when she was discharged.

Around July 4, 2017, while investigating another matter, it came to the employer's attention that claimant may have been ringing in associate discounts improperly. The investigation into claimant's conduct included an extensive review of video footage, receipts, and purchase history. The investigation was completed on July 14, 2017. The employer found on June 9, 2017, claimant completed a transaction in which the customer was her fiancé. (Exhibit 4). Claimant rang the transaction in under another employee's discount number and signed that employee's name to the receipt. (Exhibit 7). The employer's policies only allow an associate or spouse to use the discount and prohibit employee's from ringing in purchases under their own discount numbers. (Exhibit 1). Furthermore, the employer's computer system will not allow employees to complete transactions using their own employee id number to make purchases at a discount. This policy is located in the employee handbook, of which claimant received a copy. The investigation also found several incidents in which claimant received oil changes, but was

not charged and did not pay for the labor. (Exhibit 5). The policies do not provide for discounts on labor.

On July 18, 2017, claimant was interviewed by Connolly regarding his findings. Claimant initially denied the transaction on June 9 occurred, but became very upset once confronted with the video footage. Claimant was subsequently discharged. During the hearing, claimant explained she had forgotten about the June 9 transaction, which is why she initially denied it. Claimant testified a former manager had permitted her to allow her fiancé to use her discount, but acknowledged she knew employees were not allowed to ring in their own purchases, which is why she completed the transaction under another employee's name and discount number and signed the employee's name to the receipt. In regards to the labor on the oil changes, claimant testified she knew she was required to pay for labor under the employer's policies, but did not realize that the invoices she was given did not include any labor charges.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
  - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Here, the employer's rules clearly outline when an employee discount can be used and by whom. The claimant was given a copy of these rules. Claimant testified she believed she had been given permission by a prior manager for her fiancé to use her employee discount, despite the fact that the two were not married. Claimant further testified she did not realize she was not being charged for labor when she paid for oil changes. Even if all this is true, claimant also testified she knew employees were not able to ring in their own purchases and in order to circumvent the system, she rang in one of her fiancé's purchases under another employee's number and then forged that employee's signature on the receipt. Claimant knew this conduct violated the employer's policies, but disregarded those policies and engaged in the conduct nonetheless. Claimant's deliberate disregard for the employer's policies is disqualifying misconduct and benefits are denied.

**DECISION:**

The August 7, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs