

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JORDAN L DOW**  
Claimant

**APPEAL NO: 09A-UI-10935-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LENSCRAFTERS INC**  
Employer

**OC: 06/21/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Lenscrafter, Inc. (employer) appealed a representative's July 21, 2009 decision (reference 01) that held Jordan L. Dow (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for non disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 14, 2009. The claimant participated in the hearing. Dianna Perry-Lehr, a TALX representative, appeared on the employer's behalf with Adrian Miller testifying for the employer. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 22, 2008. The claimant worked 30 to 35 hours a week as a sales associate. The employer's discount policy allowed employees or an employee's dependents a discount. An associate could use a discount on items for personal use, immediate family or gifts. The claimant understood the employer's discount policy.

In late or early June, the claimant helped an older woman purchase some glasses. The customer was not related to the claimant and was not a personal friend. While he talked to this customer, she asked if he received any discounts. The claimant told her that in a couple of weeks he would receive a discount on five pairs of sunglasses. The woman bought a pair of sunglasses for about \$500.00.

A couple of weeks later, the same woman came back and asked the claimant if he would give her a discount if she bought another pair of glasses. When the claimant told her he could not do this, she became upset with him. The woman did not return to buy another pair of sunglasses.

The woman wrote a letter to the employer and reported the claimant had offered her his employee's discount on a pair of sunglasses if she paid cash. The customer indicated she was reporting this because she did not believe this was proper. Miller told the claimant a customer had made a complaint against him. The claimant asked if he could talk to the regional manager to explain what happened, but Miller indicated this was not necessary. Four or five days later, the regional manager discharged the claimant for violating the employer's discount policy. No one talked to the claimant to find out what happened with this customer.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

In this case, the claimant's testimony that he did not offer a customer the use of his employee discount must be given more weight than the employer's reliance on hearsay information from a customer who did not testify at the hearing. Even the regional manager, who made the decision to discharge the claimant, did not testify at the hearing. Since the claimant's testimony is credible, a preponderance of the evidence does not establish that the claimant violated or attempted to violate the employer's discount policy. As of June 21, 2009, the claimant is qualified to receive benefits.

**DECISION:**

The representative's July 21, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of

June 21, 2009, the claimant is qualified to receive benefits. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs