

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIFFANY A HOOD**  
Claimant

**APPEAL NO. 08A-UI-11698-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALGREEN CO**  
Employer

**OC: 10/12/08 R: 02**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated December 4, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on December 30, 2008. Although duly notified, the claimant failed to respond to the hearing notice and did not participate. The employer participated by Mr. Hugh O'Hare, hearing representative, and witness Meredith McIntee, store manager.

**ISSUES:**

The issues in this matter are whether the claimant was discharged for misconduct and whether the claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from November 26, 2007, until May 7, 2008, when she was discharged for theft and/or misappropriation of company property. Ms. Hood was employed as a full-time service clerk and was paid by the hour.

The claimant was discharged after surveillance tape had showed the claimant had provided company merchandise to another individual without scanning it, in violation of company policy. When questioned, the claimant admitted to misappropriating substantial amounts of company property in this manner. The claimant also admitted to consuming food stuffs and other company property, in violation of policy.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Ms. Hood was discharged for misconduct in connection with the employment. It does.

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.

The evidence in the record clearly establishes that the claimant was discharged when she intentionally allowed company merchandise to be passed to another individual without payment. Under a plan devised by the claimant, merchandise was passed through the company's checkout area without being scanned. The matter was reviewed by company surveillance personnel and the claimant was interviewed. In the interview, the claimant freely admitted to misappropriating substantial amounts of company property. This conduct is clearly contrary to the employer's interests and standards of behavior that the employer has a right to expect of its employees under the provisions of the Iowa Employment Security Act. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated December 4, 2008, reference 01, is reversed. The claimant was discharged for misconduct in connection with her work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided she meets all other eligibility requirements of Iowa law. The administrative law judge remands the issue of overpayment to the Claims Division for a determination as to whether there has been an overpayment of benefits, the amount, and whether the claimant will have to repay those benefits.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

kjw/kjw