

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**BRANDY R GHEER  
2726 TELEGRAPH RD  
DAVENPORT IA 52804-4328**

**BON TON  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-05753-CT  
OC: 04/16/06 R: 04  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Bon Ton filed an appeal from a representative's decision dated May 22, 2006, reference 02, which held that no disqualification would be imposed regarding Brandy Gheer's separation from employment. After due notice was issued, a hearing was held by telephone on June 21, 2006. Ms. Gheer participated personally. The employer participated by Carrie Hall, Assistant Human Resources Manager, and by Cathy Gilman and Joanne Veckler, Sales Managers. The hearing record was left open to receive a copy of a video surveillance tape. The tape has been received and a copy provided to Ms. Gheer. The hearing reconvened on August 23, 2006. The same parties again participated in the hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Gheer was employed by Bon Ton, doing business as Younkers, from July 22, 2001 until April 12, 2006. She was employed as a sales associate and worked from 20 to 29 hours each week. She was discharged based on an allegation that she misrepresented her work hours.

On April 8, 2006, Ms. Gheer was scheduled to be at work at 9:45 a.m. She did not arrive at her work station until approximately 10:06 a.m. She indicated on her time card that she arrived at 9:50 a.m. She was ill and spent some time in the restroom before reporting to her work station. On April 10, she was scheduled to be at work at 7:45 a.m. but did not arrive until 8:14 a.m. She indicated on her time card that she arrived at the 7:45 a.m. Her arrival on both days was observed on video surveillance. As a result of the discrepancies between her actual arrival times and the times she noted on her time card, Ms. Gheer was discharged on April 12, 2006. The above matters constituted the sole reason for the discharge.

Ms. Gheer filed a claim for job insurance benefits effective April 16, 2006. She has received a total of \$1,323.00 in job insurance benefits since filing her claim.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Gheer was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Gheer was discharged for misrepresenting her arrival times on April 8 and April 10, 2006. The discrepancies were not a matter of a few minutes that might be explained by different clocks having different times. The discrepancy was 15 minutes on April 8 and 30 minutes on April 10. Her conduct had the potential of her receiving pay for time she had not actually worked. Her actions, therefore, constituted theft, which is clearly contrary to the type of behavior an employer has the right to expect.

For the reasons stated herein, the administrative law judge concludes that the employer has satisfied its burden of proving misconduct. Accordingly, benefits are denied. Ms. Gheer has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

#### DECISION:

The representative's decision dated May 22, 2006, reference 02, is hereby reversed. Ms. Gheer was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Gheer has been overpaid \$1,323.00 in job insurance benefits.

cfc/pjs