

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE L THOMPSON
Claimant

APPEAL NO. 08A-UI-11145-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALGREEN CO
Employer

OC: 10/26/08 R: 02
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Walgreen Company filed a timely appeal from an unemployment insurance decision dated November 18, 2008, reference 01, that allowed benefits to Nicole L. Thompson. After due notice was issued, a telephone hearing was held December 11, 2008, with Ms. Thompson participating. Executive Assistant Manager Leslie Dovel and District Loss Prevention Supervisor Shirley Phinney testified for the employer, which was represented by Lisa Harroff of TALX UC eXpress.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Nicole L. Thompson was employed by Walgreen Company from July 29, 2005, until she was discharged October 29, 2008. She last worked as a beauty advisor. On or about October 26, 2008, Executive Assistant Manager Leslie Dovel observed Ms. Thompson filling out rain check forms based upon an expired weekly advertisement. The rain checks were not for a customer; they were for her herself. Ms. Thompson forged the initials of another employee to make it appear that she had not filled out her own rain check slip. Ms. Thompson was aware that this was a violation of company policy.

Ms. Thompson has received unemployment insurance benefits since filing a claim during the week of October 26, 2008.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence record establishes that the claimant was discharged for misconduct in connection with her 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 claimant did not seriously deny that she attempted to purchase merchandise for below retail price based upon a rain check that she completed for herself, all in violation of company policy. The administrative law judge views this as deliberate action contrary to the employer's interests. Benefits must be 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.

The question of whether Ms. Thompson must repay the benefits she has already received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated November 18, 2008, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The question of whether the claimant must repay benefits already received is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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