

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE J KUHLE
Claimant

APPEAL NO: 10A-UI-10462-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENSCRAFTERS INC
Employer

OC: 05/30/10
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's July 15, 2010 decision (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on September 21, 2010. The claimant participated in the hearing. Jacqueline Jones, a TALX representative, appeared on the employer's behalf and Adrian Miller, the store manager, testified on the employer's behalf. 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 April 28, 2009. Prior to her employment separation, the claimant worked as an assistant manager. Miller supervised her. In early May 2009, and in mid-May 2010, the claimant received a copy of the employer's handbook. The handbook contains principles of conduct which in part inform employees that falsification of company records, including clocking out early, may result in corrective action including termination.

On May 17, 2010, the claimant finished all closing procedures and work by 9:23 p.m. Either while she was finishing the closing procedures or just after she had finished, she received a call from her boyfriend. The claimant stayed in the store to talk because she felt safer in the locked store than in her car. The claimant had recently received threats from an individual, not a co-worker. The claimant talked to her boyfriend about an hour. After the claimant finished talking to her boyfriend, she clocked out and left.

When the employer discovered the claimant had been talking on her cell phone for an hour before she clocked out, the employer talked to her. The claimant admitted she was on a

personal phone call for an hour before she clocked out. Miller reported the incident to the employer's corporate office.

Although the claimant's job was not in jeopardy prior to May 17, the employer's corporate office decided to discharge her. On May 24, 2010, Miller informed the claimant she was discharged for falsifying her timecard on May 17, 2010. The claimant indicated she made a mistake. When she clocked out, she did not think. She just clocked out and went home.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 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).

The employer established justifiable business reasons for discharging the claimant. While the claimant used poor judgment when she did not let Miller know she clocked out an hour after she had finished her work, this isolated incident does not constitute work-connected misconduct. The evidence does not establish if the employer considered any other information that led to the decision to discharge the claimant. As of May 30, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's July 15, 2010 decision (reference 02) is affirmed. The employer discharged the claimant for business reasons, but did not establish the May 17 isolated incident

amounts to work-connected misconduct. As of May 30, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css