

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAROLD E DRESSER
Claimant

APPEAL NO. 07A-UI-02923-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VON MAUR INC
Employer

**OC: 02/11/07 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Harold Dresser, filed an appeal from a decision dated March 19, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 16, 2007. The claimant participated on his own behalf. The employer, Von Maur, participated by Floor Manager Leanne Gudenkauf. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Harold Dresser was employed by Von Maur from May 8, 2006 until January 25, 2007, as a part-time sales associate. At the time of hire he attended orientation and was given an employee handbook. The employer's policy prohibits employees from handling their own transactions, either purchases or returns, and any misuse of the employee discount. Violation of the policies is subject to discharge.

Mr. Dresser purchased an article of clothing with a retail value of \$77.00, but with his employee discount it cost \$61.60 plus tax. On January 6, 2007, he returned the item, processing the transaction himself and issuing a store gift card for \$77.00, the full cost of the item. Within a few hours he used the gift card to purchase other items in the store using his employee discount. The home office notified the store of this irregular transaction on January 15, 2007, and the next time the claimant was scheduled to work was January 25, 2007, at which time Floor Manager Leann Gudenkauf discharged him.

REASONING AND CONCLUSIONS OF LAW:

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 maintained this was not a deliberate attempt to steal from the employer by misuse of the employee discount. No one asserted it was an attempt at theft, it was a violation of two company policies, processing his own transaction and misuse of the discount. He credited himself with more money than he paid for the article, then used the refund to purchase other items with his discount.

Mr. Dresser did receive orientation and the employee handbook and certified he was responsible for the content of the handbook. He acknowledged his use of the computer/register was weak but that did not stop him from issuing himself a refund credit on items which caused the problem. His assertion that he did not know the cash register did not automatically process the discount amount is not credible, because there was an earlier incident, in another store, where his returned items did not include the discount, and Ms. Gudenkauf discussed the matter with him.

While the claimant may not have intended to "steal" money from the employer, his violation of known policies was a violation of duties and responsibilities the employer has a right to expect of employees. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of March 19, 2007, reference 01, is affirmed. Harold Dresser is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw