

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENYS M HUNSICKER
Claimant

APPEAL NO. 09A-UI-18712-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RGIS
Employer

OC: 10/18/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Denys Hunsicker filed an appeal from a representative's decision dated December 2, 2009, reference 02, which denied benefits based on her separation from RGIS. After due notice was issued, a hearing was held by telephone on January 26, 2010. Ms. Hunsicker participated personally. The employer participated by Mike Schneider, District Manager. Exhibit One was admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Hunsicker was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hunsicker was employed by RGIS from February of 2008 until August 5, 2009. She worked approximately 20 hours each week as an auditor. She was discharged due to theft.

Ms. Hunsicker was part of the team conducting an inventory at the Lowe's store in West Des Moines on August 4, 2009. On August 5, RGIS received a communication from Lowe's concerning one of the team members, later identified as Ms. Hunsicker. It was reported that she remained at the store after the remainder of the team left. The report indicated that she set off an alarm when trying to leave the building and retreated to a different area of the store. She attempted to leave through a different exit but again set off an alarm. It was reported that she appeared to have something protruding under her shirt. She was observed go into the bathroom where razor blades and empty merchandise cartons were later discovered. Throughout this time, Ms. Hunsicker continued to wear a shirt that identified her as an RGIS employee.

Ms. Hunsicker acknowledged during the hearing that she was stopped by Lowe's personnel at some point and questioned regarding the contents of the bag she was carrying. She did not have a receipt for all of the items in the bag and told the associate she may have left it in the

bathroom. When went to the bathroom but did not present Lowe's with any receipt after going into the bathroom. She left the store without incident. She was notified of her discharge on August 5, 2009.

REASONING AND CONCLUSIONS OF LAW:

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. Hunsicker was discharged because she attempted to steal merchandise. Although she may have been technically off duty at the time, she was still wearing a uniform that identified her as working for RGIS, an entity that performed services for Lowe's. Therefore, her conduct was in connection with her employment.

Ms. Hunsicker's actions of August 4 were observed on video surveillance tape. The observations from the recording satisfy the administrative law judge that she was, in fact, attempting to remove merchandise from Lowe's without making payment. The employer's business consists of going into retail outlets and conducting inventories. The employer has to be able to trust that its teams will not steal merchandise while doing the audits. A store is not likely to continue to do business with an entity whose employees commit theft while conducting audits. Ms. Hunsicker's actions constituted a substantial disregard of the employer's interests as it could have resulted in the loss of business. It was also contrary to the standards she knew or should have known the employer expected. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated December 2, 2009, reference 02, is hereby affirmed. Ms. Hunsicker was discharged by RGIS for disqualifying misconduct. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css