

IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS

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

**DILLON WILLIAMS**  
Claimant

**APPEAL NO: 07A-UI-10213-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DILLARD'S INC**  
Employer

**OC: 10/07/07 R: 03**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7— - ~~Overpayment~~ ~~Overpayment~~

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**STATEMENT OF THE CASE:**

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Dillard's Inc. (employer) appealed an unemployment insurance decision dated October 26, 2007, reference 01, which held that Dillon Williams (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 26, 2007. The claimant participated in the hearing. The employer participated through Joan Stoner, Manager. 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.

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**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time sales associate from June 12, 2007 through July 12, 2007 when he was discharged for theft. The employer received a call from a customer on July 9, 2007 complaining that an associate had not returned her gift card to her even though it had a balance. The incident occurred on July 7, 2007 and the associate, Aaron Zapatta, told the customer that it was not necessary for her to have the gift card if she had her receipt. The customer did have the receipt which showed the gift card number. The employer investigated the matter and learned that the gift card had been used by the claimant.

The employer reviewed surveillance tapes as to when the gift card was used. On July 7, 2007 the claimant and Mr. Zapatta were standing at the customer service counter and the claimant had three men's items to purchase. He attempted to make a payment on his account by writing a check for it but stopped and walked over to the credit phone. After speaking with someone in the credit department, the claimant returned to the counter and pulled the gift card out of Mr. Zapatta's breast pocket and handed it to the clerk. The gift card had a balance of \$30.04 and the purchase cost \$21.33, which left a balance of \$8.71. The claimant gave the gift card to his wife who used it to make another purchase in the home store. The claimant's wife used the gift card but still owed \$6.12, so she placed that amount on the claimant's personal billing account.

The employer contacted the police who questioned the claimant and Mr. Zapatta. Both parties provided inconsistent stories as to how Mr. Zapatta got the gift card. When questioned at the time, the claimant could not offer any explanation as to why he reached into Mr. Zapatta's pocket to retrieve the card. The claimant and Mr. Zapatta were both discharged and criminally charged with theft. The claimant testified he was subsequently found "innocent."

The claimant filed a claim for unemployment insurance benefits effective October 7, 2007 and has received benefits after the separation from employment.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Ref-Iowa Code § 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.

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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 claimant was discharged for theft when he knowingly used a customer's gift card without authorization to make personal purchases ~~without authorization~~. Surveillance tapes confirmed the claimant is the individual who used the card after retrieving it from his co-employee's breast pocket. The claimant denies any wrongdoing

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and offered an absurd explanation as to why he retrieved the card from his co-employee's pocket. The claimant said his co-employee admitted the claimant had nothing to do with the theft of the card but the co-employee was not available for testimony to testify.

**If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard for the standards of behavior the employer had the right to expect of the claimant.**

Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Ref Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

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Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated October 26, 2007, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$990.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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