

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALISSA GERARDY
Claimant

APPEAL NO. 14A-UI-03817-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THEISENS INC
Employer

OC: 03/09/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 31, 2014, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 29, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Cindy Burdt participated in the hearing on behalf of the employer with a witness, Phil Marzen. Exhibit A to C and One were admitted into evidence.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a cashier from April 14, 2012, to March 11, 2014. She was informed and understood that under the employer's work rules, theft and giving unauthorized credits or discounts on merchandise to friends, relatives, or other associates was prohibited. The work rules under the topic "Empowerment" also state that associates were allowed to give special allowances to customers for merchandised price up to \$100.00 without management approval.

On February 25, 2014, noticed a pair of boots originally priced at \$19.99 that had placed on clearance in January for a price of \$10.00. Under the employer's pricing policy, the claimant understood that the boots should have been discounted to 25 percent of the clearance price in February and 50 percent of clearance price in March.

Since she understood that the boots were to be priced down to \$5.00 in four days, she asked a sale associate, Lindsey Claus, in the clothing department if she could buy the boots for \$5.00 that day. Based on past experience with similar transactions and knowledge of what others had done, Claus believed allowing the discounting of the boots to \$5.00 was authorized under the empowerment work rules. She approved the claimant paying \$5.00 to buy the boots.

When management found out in March that the claimant had purchased the boots for \$5.00, the employer discharged her for theft and obtaining an unauthorized discount.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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 substantial and 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that she believed associates had the authority to give special allowances to a customer (and an associate who was purchasing merchandise) without management approval in situation like what happened on February 25. It is very clear that Lindsey Claus had the same understanding.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated March 31 2014, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css