

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY M DICKERSON
Claimant

APPEAL NO: 11A-UI-02750-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

K MART CORP
Employer

OC: 01/09/11
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 24, 2011 determination (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 non disqualifying reasons. The claimant participated in the hearing. Jason Everis, a loss prevention manager, Kathryn Berndt, the human resource manager, and Antonio Pereda, a loss prevention manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 17, 2010. He worked an average of 30 hours a week as a replenishment employee restocking merchandise at night. The employer's policy requires employees to pay for all food consumed.

After reviewing surveillance video of the overnight replenishment crew, the employer saw the claimant and other employees take food out the damaged goods bin and eat it. None of these employees paid for any of the food consumed. The employer was investigating a number of employees who reportedly consumed the employer's food products without paying for it.

The employer talked to the claimant about the video observation on November 11. During the interview, the claimant admitted he took food out of the damage food bin, ate it, but did not pay for it. He also volunteered that he had taken some CDs without paying for them. The employer discharged the claimant for theft on November 11, 2010.

The claimant was also charged with theft by the local authorities. The claimant pled guilty to taking about \$200.00 in merchandise from the employer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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).

On November 11, 2010, the claimant admitted to the employer that he took product without paying for it. As a result, of the claimant's November 11 admission in addition to a surveillance video showing he ate food from the damaged food bin without paying for it, the claimant's actions amount to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct. As of January 9, 2011, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's February 24, 2011 determination (reference 02) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 9, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs