

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY S AINSWORTH
Claimant

APPEAL NO. 06A-UI-09825-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLAIRE'S BOUTIQUES INC
Employer

OC: 09/26/06 R: 02
Claimant: (Respondent) (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Claire's Boutiques, Inc. (employer) appealed a representative's September 26, 2006 decision (reference 01) that concluded Wendy S. Ainsworth (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 23, 2006. The claimant participated in the hearing. David Williams, a representative with TALX, appeared on the employer's behalf. Michelle Quick, a district sales manager, testified on the employer's behalf. During the hearing Employer's Exhibits One through Four were offered and admitted as evidence. 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.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on May 5, 2004. The claimant worked full-time as the store manager. The claimant knew the employer's policy did not allow customers to receive cash for a return that had been paid for by a credit card. The claimant also understood the employer required control slips to be completed so refunds could be verified by calling the phone number on the control slip. (Employer Exhibit Two.)

After learning there were an unusually high number of returns compared to the sales of the claimant's store in early August, the employer started investigating the returns accepted at the store. The employer reviewed returns from May 31 through August 1, 2006.

The investigation revealed over 20 returns that were either done incorrectly or were not verifiable. The claimant was the only person clocked in at the time the questioned returns were made. (Employer Exhibit Four.) Problems with the returns included giving a customer cash back on a credit charge, refunding merchandise when the customer did not have a receipt for all the merchandise returned, the control slips did not list phone numbers or the phone number was wrong or there was no control slip for some returned items. (Employer Exhibit Two.) The claimant denied she had anything to do with the returns herself even though she was the only person on the clock. The claimant denied she signed any of the control slips when the employer noticed problems. The amount of money refunded that was not verifiable or was at issue was over \$900.00.

The employer discharged the claimant because while some of the returns she had done during this period were done correctly, more than 20 had not been done correctly. Also, as the manager, the employer held the claimant to a higher standard. Since the claimant was responsible for reviewing returns she should have caught these problems before the employer. The employer discharged the claimant on August 31, 2006.

The claimant established a claim for unemployment insurance benefits during the week of August 27, 2006. The claimant filed claims for the weeks ending September 9 through October 21, 2006. The claimant received her maximum weekly benefit amount of \$319.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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).

Although the claimant asserted she did not sign any of the control slips the employer had for the questionable returns, the evidence indicates the claimant was the only person on the clock at the time of the returns. As the store manager, it was the claimant's responsibility to check paperwork completed by her employees. The claimant's blanket denial that she did not process any of the questionable transactions does not overcome the fact she was the only person working. Even though the claimant suggested that she allowed her employees to work off the clock and they completed these transactions, this is an assertion that is not supported by any reliable evidence. A preponderance of the evidence establishes the employer discharged the claimant for reasons constituting work-connected misconduct.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending September 9 through October 21, 2006. The claimant has been overpaid a total of \$2,233.00 in benefits for these weeks.

DECISION:

The representative's September 26, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 27, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending September 9 through October 21, 2006. The claimant has been overpaid and must repay a total of \$2,233.00 in benefits she received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs