

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER A PEARSON
Claimant

APPEAL NO. 06A-UI-10240-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENSCRAFTERS INC
Employer

**OC: 09/17/06 R: 03
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Lenscrafters, filed an appeal from a decision dated October 12, 2006, reference 01. The decision allowed benefits to the claimant, Jennifer Pearson. After due notice was issued a hearing was held by telephone conference call on November 6, 2006. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Senior Regional Loss Prevention Manager Richard Dobbson. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jennifer Pearson was employed by Lenscrafters from June 20, 1999 until September 19, 2006. At the time of separation she was a full-time store manager. The company received anonymous tips that the claimant had been entering fraudulent information into the company records and an investigation was started by Senior Regional Loss Prevention Manager Richard Dobson.

By reviewing the store records and cross-referencing these with the information from the on-site doctor, Mr. Dobbson discovered Ms. Pearson had been entering information about legitimate customer purchases but then creating a “fake” secondary transaction for contact lens. This resulted in the claimant receiving a small bonus, \$1.00 per transaction, plus company recognition.

Mr. Dobbson interviewed Ms. Pearson on September 13, 2006, and she acknowledged she had falsified the records simply to be “competitive” with other employees. She confessed in a written statement and agreed to pay back \$25.00 in bonus money to which she was not entitled. Mr. Dobbson then recommended to the regional manager and the district manager that the claimant be discharged, and she was notified by the manager on September 19, 2006, she was fired.

Jennifer Pearson has received unemployment benefits since filing a claim with an effective date of September 17, 2006.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged for falsifying company records, creating bonuses and sales statistics for herself to which she was not entitled. An employer has the right to expect honesty and integrity from its employees. Ms. Pearson's conduct was a violation of the duties and responsibilities the employer had a right to expect. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 12, 2006, reference 01, is reversed. Jennifer Pearson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$532.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs