

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KASEY L MILLER**  
Claimant

**APPEAL NO. 12A-UI-15141-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE BON-TON DEPARTMENT STORES INC**  
Employer

**OC: 11/18/12**  
**Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated December 17, 2012, reference 01, that concluded the claimant was eligible for unemployment insurance benefits because she was forced to resign or be discharged. A telephone hearing was held on January 29, 2013. The parties were properly notified about the hearing. The claimant called in and provided a phone number for the hearing but was not available at that number at the time of the hearing. Anna Ryherd participated in the hearing on behalf of the employer.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?  
Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked for the employer as a Clinque counter manager from June 15, 2012, to November 16, 2012. She was informed and understood that under the employer's work rules, associates would receive full purchase price less discount for all returns made with a receipt and the lowest selling price ever offered less discount without a receipt. The rules require associates to identify themselves as employees whenever making a return or exchange to make sure the associate discount is deducted.

The claimant willfully violated the rule for employee returns on October 18 when she returned a pair of shoes for cash without a receipt. She did not identify herself as an employee and the associate discount of \$14.99 was not deducted from the amount returned.

In mid-November, the employer's loss prevention unit discovered an exception report that showed that the claimant received a full refund for the shoes without any deduction for the associate's discount. When questioned about this on November 16, she admitted she did not have the associate discount deducted from refund for the shoes. When she was asked to write out a statement, she declined and said she wanted to put in her two-week notice. The regional

human resource manager said the separation was a discharge and would not allow the claimant to resign.

The claimant filed for and received a total of \$2,237.13 in unemployment insurance benefits for the weeks between November 18, 2012, and January 26, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The evidence is clear in this case that the employer discharged the claimant.

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 claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of 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.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated December 17, 2012, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs