

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SAMANTHA M HOLMAN
Claimant

MENARD INC
Employer

APPEAL 17A-UI-07686-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/02/17
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the July 24, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 16, 2017. The claimant participated personally. The employer participated through Alex Meyers, store counsel. Tim Bormann, general manager, testified for the employer. Department Exhibit D-1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a front end manager and was separated from employment on July 3, 2017, when she was discharged for submitting rebates that were not authorized.

The claimant was discharged for falsely claiming \$58.51 dollars in rebates to which she was not entitled. The claimant was given a copy of the employer's handbook and policy manual and was trained when she was hired. She was specifically instructed that if a customer left behind a receipt she was to tear the receipt up and throw it away. Under no circumstances was the claimant allowed to keep or use the receipt. Even if a customer were to give the receipt to the claimant, she was not allowed to keep it but was to follow the written policy and tear it up (Department Exhibit D-1). The claimant asserted she believed she was entitled to claim rebates

related to purchases she did not actually make if someone gave them to her, outside of the store. The claimant stated people would approach her and her husband at their gym and outside of work and would offer receipts to them to claim rebates. The rebate forms would be completed in the claimant's name.

Prior to discharge, the claimant had no prior warnings for rebate fraud but had a \$100.00 cash shortage for her register on April 10, 2017 and was responsible for an \$82.00 safe shortage on April 28, 2017. The employer runs a rebate program which allows customers to send in receipts and receive credit that they can use to purchase items in the store. The employer's computer system allows them to track rebates that are mailed to the homes of current employees. The security team alerted the employer to the fact that rebates were being mailed to the claimant's home address. The employer investigated. The employer's investigation, which included review of four specific transactions, as well as viewing surveillance video, showed the claimant taking receipts left behind by guests. Those receipts were later mailed in for a rebate in the claimant's name. The employer was able to verify the original transaction tied to the rebate was a purchase made on the claimant's register while she cashiered, but not her own purchase. The claimant did not acknowledge knowing the individuals tied to the receipts. When confronted by the employer, the claimant denied wrongdoing. She stated people, including those at her gym, "just gave the receipts" to her and her husband upon learning she worked at Menards, and they in turn would request the rebates. She was subsequently discharged.

The administrative record reflects that claimant has a weekly benefit amount (WBA) of \$349.00 but has not received unemployment benefits since filing a claim with an effective date of July 2, 2017. The administrative record also establishes that the employer did participate in the July 20, 2017 fact-finding interview by way of Tim Bormann, general manager.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct. Benefits are denied.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The claimant worked in the capacity as a second front end manager, and would be reasonably held to a higher standard, as he was in a leadership role. The claimant should have been setting a positive example, upholding the employer's policies and promoting the employer's best interests. The claimant had been given clear instructions that she was not to take receipts that were not for her purchases. The claimant took receipts she was not entitled to and obtained the rebates for them. The administrative law judge was not persuaded that the claimant did not violate the policy if she accepted and redeemed receipts obtained outside of the store premises, given the plain reading of the employer's policy (Department Exhibit D-1).

The administrative law judge did not find the claimant's testimony credible that random people at the gym and in her personal life would seek her out upon learning she worked at Menard's and offer her receipts to redeem for rebates on her own behalf. Further, it cannot be ignored that four transactions in question were tied to transactions the claimant completed, thereby further discrediting the claimant's explanation that random people at the gym gave the claimant or her husband a receipt, for a transaction she had processed. Rather, the claimant was obtaining a financial gain from customer receipts. Her actions are conduct not in the employer's best interest and are a clear violation of the employer's work rules that had been given to her. Her actions constitute substantial job connected misconduct sufficient to disqualify her from receiving unemployment insurance benefits. Benefits are denied.

Because the claimant's separation was disqualifying, benefits were originally allowed. However, she did not receive any benefits and therefore there is no overpayment in accordance with Iowa Code § 96.3(7). The administrative law judge further concludes the employer satisfactorily participated in the fact-finding interview pursuant to Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10.

DECISION:

The July 24, 2017, (reference 01) decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has not been overpaid benefits. The employer's account is relieved of charges associated with the claim.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn