

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NANCY L BREMER**  
Claimant

**APPEAL NO. 11A-UI-09244-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK SHOP INC**  
Employer

**OC: 06/12/11**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated July 7, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on August 4, 2011. The claimant participated personally. The employer participated by Mr. Jeremy Glass, district advisor.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Nancy Bremer was employed by Kwik Shop, Inc. from November 9, 2009, until May 13, 2011, when she was discharged for violation of company policy. Ms. Bremer worked as a part-time sales associate and was paid by the hour. Her immediate supervisor was Mika Beagley.

The claimant was discharged for violation of a company policy that prohibits sales associates from making transactions by telephone. Company policy requires that customers must have cash to purchase pre-paid credit cards or similar instruments. The claimant and other employees were aware of the strict company policy, because it was covered in orientation as well as in training, and the employer had left numerous notes on cash registers to remind sales associates not to do transactions by telephone and to remind them that the company must be paid at the time for any transactions.

On May 12, 2011, the claimant rang up a \$300 reload to a telephone card over the phone without being paid for the transaction. The caller promised to "pay for it later." Ms. Bremer had been personally alerted by the company's district advisor to be aware of telephone scams of this nature and to adhere to company policy. Although Ms. Bremer later recognized that she had made a serious error, she did not report the matter to her manager.

At the time of discharge, the claimant admitted to violation of policy, stating only that she "wasn't thinking."

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. The employer has sustained its burden of proof in showing that Ms. Bremer was trained on the company telephone sales policy and the company had reminded the claimant and other workers on numerous occasions not to violate the policy. Although the claimant was aware of the policy and had been reminded, she nevertheless authorized a \$300 reload of a telephone card via telephone without receiving payment for it, causing the company a \$300 loss.

The administrative law judge finds the employer's rule to be reasonable and work-related and finds that the claimant was aware of the rule. Ms. Bremer has provided no reasonable explanation for her failure to follow the company's telephone sales rule. The administrative law judge thus concludes that the claimant's conduct showed a disregard for the employer's interests and standards and behavior that the employer had a reasonable right to expect of its employees under the provisions of the Iowa Employment Security Law. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The representative's decision dated July 7, 2011, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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