

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBBIE D CONNER**  
Claimant

**APPEAL NO: 07A-UI-01861-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FLYING J INC**  
Employer

**OC: 01/21/07 R: 04**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Flying J, Inc. (employer) appealed a representative's February 12, 2007 decision (reference 01) that concluded Debbie D. Connor (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 address of record, a telephone hearing was held on March 8, 2007. The claimant participated in the hearing. Vince Barrett, the general manager, appeared on the employer's behalf. 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.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on January 30, 2003. The claimant worked as a full-time merchandise manager. In addition to keeping inventory current and stocking shelves, the claimant also helped the cashiers when the employer was very busy or shorthanded. Barrett has been the claimant's supervisor since May 2005.

Barrett did not notice any problems with the claimant's job performance until about six months before her employment separation. When the employer talked to the claimant about product that was not on the shelves for customers to buy, the claimant indicated she needed more help or that the suppliers were out of the product. The claimant's job required her to go down the aisles and hand scan each product to determine how much product the employer had in its inventory. If the employer needed product, the employer's computer system informed the corporate office, which corporate office personnel then ordered.

On November 9, 2006, the employer gave the claimant a written warning for not keeping the store stocked with its products. The employer informed the claimant she needed to improve her job performance immediately. The claimant knew she was somewhat behind when she received the written warning because she had just had a miscarriage two days earlier.

Prior to the November 9 warning, the claimant did the inventory twice a week. After the November 9 warning, she drew up a floor plan to make sure she scanned all products at least once a week. For a while, the facilities manager helped the claimant complete her inventory job duties. The employer told the facilities manager he needed to make his job duties his primary responsibility instead of helping the claimant so much.

After the November 9, 2006 warning, the employer did not give the claimant another written warning. The employer however still received reports from secret shoppers that product was missing from the store's shelves. On January 19, 2007, Barrett went through the aisles and found over 110 products missing from the employer's shelves. When the employer talked to the claimant about the inventory, she acknowledged she was behind because the employer had recently been short handed and she spent a majority of her day working as a cashier instead of working as the merchandise manager.

On January 19, the claimant planned to go catch up on the inventory but the employer's computer server went down so the claimant was unable to use the hand scanner or do any of the inventory that day. The claimant also informed the employer that some of the missing product was the result of suppliers not having the product to ship to the employer even though the product had been ordered. When the employer only discovered nine or ten products that were not on the shelf because the supplier did not have the product to ship, the employer stopped doing this check because Barrett did not believe this was a valid excuse for not having product on the shelves. On January 22, 2007, the employer discharged the claimant for repeatedly failing to perform her job.

#### **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 section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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).

The facts establish the employer had business reasons for discharging the claimant. As of January 22, 2007, the employer was still not satisfied with the claimant's job performance. The facts, however, indicate there were factors the employer did not consider when deciding to discharge the claimant. When the employer was at the store, the employer observed the claimant working. The employer even acknowledges at times the claimant asked for more help

so she could do her job satisfactorily. Since the claimant did not actually order product, it is difficult to know how long it took the corporate office to order a product after the claimant reported the need to order a product. The employer acknowledged that some of the missing product occurred because the supplier was out of product and could not ship it to the employer.

The employer did not establish that the claimant intentionally or substantially disregarded her work duties. The claimant did not commit work-connected misconduct. Therefore, as of January 21, 2007, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's February 12, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of January 21, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs