

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS J WEEPIE**

Claimant

**APPEAL NO. 13A-UI-04062-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEARS ROEBUCK & CO**

Employer

**OC: 03/10/13**

**Claimant: Respondent (2-R)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 29, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 9, 2013. Claimant Travis Weepie participated. Aaron Stamm represented the employer. Exhibits One and Two were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Travis Weepie was employed by Sears Roebuck & Company as the full-time General Manager of the employer's Waterloo store until March 13, 2013, when the employer discharged him for theft. Mr. Weepie had been in charge of the Waterloo store for eight years and had been with the company since 1990.

On February 26, 2013, Mr. Weepie used the employer's computerized cash register to enter a bogus customer refund in the amount of \$1,765.43. Mr. Weepie credited that amount to his own credit card. Mr. Weepie used a subordinate's ID number to enter the bogus refund. The employer's surveillance records showed Mr. Weepie entering the refund credit at the register. Mr. Weepie had previously used the credit card in question to make one or more purchases at Kmart, a sister company, and the Kmart transaction record included both the credit card number and Mr. Weepie as the credit card holder. In addition the employer was able to confirm Mr. Weepie as the credit card holder by contacting the card issuer.

On September 30, 2012, Mr. Weepie had entered another bogus customer refund in the amount of \$2,559.43. Mr. Weepie credited that amount to a different credit card belong to him. Mr. Weepie had previously used that credit card to make one or more purchases at Kmart and the Kmart transaction record included both the credit card number and Mr. Weepie as the credit

card holder. In addition the employer was able to confirm Mr. Weepie as the credit card holder by contacting the card issuer.

On or about February 28, 2013, a loss prevention worker ran a transaction report that flagged both transactions. Aaron Stamm, District Loss Prevention Officer, was assigned to investigate the matters and commenced the investigation on February 28, 2013. Mr. Stamm conducted an investigation that included review of the video surveillance, contact with the issuing credit card companies, and interviews with Mr. Weepie on March 12 and 13. During the March 12 interview, Mr. Weepie made up a highly improbable story about the most recent transaction. Mr. Weepie was unable to produce any documentation for the transaction, despite his assertion that he had been dealing with the customer in question for an extended period. Mr. Weepie provided a highly improbable and illogical explanation regarding why he used another employee's ID number for the transaction. Mr. Weepie denied that the credit card that had been credited during either transaction belonged to him. It was after the first interview that Mr. Stamm contacted the card issuer and confirmed the cards had indeed been issued to Mr. Weepie and had indeed been credited with the amounts in question. On March 13, Mr. Stamm re-interviewed Mr. Weepie and confronted him with the information from the credit card issues. At that time, Mr. Weepie made up a highly improbable, absurd story about his ex-wife somehow being responsible for the transactions and setting him up. After the second interview, Mr. Weepie was suspended and the employer summoned law enforcement. The next day, the employer discharged Mr. Weepie from the employment.

#### **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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Mr. Weepie provided some of the most outlandish testimony the administrative law judge has ever heard. Mr. Weepie's fabrications have evolved since the employer's interviews with him prior to the discharge to now include a preposterous story about a former employee somehow manipulating him into placing credits on Mr. Weepie's credit cards to set Mr. Weepie up to be discharged from the employment.

The evidence in the record establishes that Mr. Weepie twice committed felony theft from the employer by generating bogus credit refunds and refunding the amounts, \$2,559.43 and \$1,765.43, to credit cards belonging to him. The evidence indicates that Mr. Weepie was intentionally dishonest with the employer when interviewed about the matters. The evidence indicates that Mr. Weepie was intentionally dishonest when providing his testimony at the unemployment insurance appeal hearing.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Weepie was discharged for misconduct. Accordingly, Mr. Weepie is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Weepie.

Iowa Code section 96.3(7) provides that benefits must 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. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

As noted on the record, if and when Mr. Weepie is convicted of an indictable offense, a serious misdemeanor or above, in connection with the thefts from the employer, the employer should provide that information to Workforce Development so that the issue of gross misconduct can be adjudicated under Iowa Code section 96.5(2)(b) and (c).

**DECISION:**

The Agency representative's March 29, 2013, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

This matter is remanded to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs