

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEILA M BRADLEY
Claimant

APPEAL NO: 13A-UI-01746-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM DISTRIBUTION MGMT INC
Employer

OC: 01/22/12

Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

Nordstrom Distribution Management, Inc. (employer) appealed a representative's February 4, 2013 decision (reference 01) that concluded Sheila M. Bradley (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on March 13, 2013. The claimant participated in the hearing. Alyce Smolsky of TALX Employer Services appeared on the employer's behalf and presented testimony from three witnesses, Paula Kamm, Rhonda Coleman, and Mauricio Castaneda. During the hearing, Employer's Exhibit One was entered into evidence. 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on May 31, 2007. She worked full time as a merchandise processor at the employer's Dubuque, Iowa distribution center. Her last day of work was January 10, 2013. The employer discharged her on that date. The stated reason for the discharge was providing false information on a production sheet.

The information on the production sheets is used to determine employees' incentive pay. On December 17 the claimant wrote on her production sheet that she had unpacked a box of 84 sunglasses. The next day the assistant manager, Coleman, reported to the manager, Kamm, that the box had not been unpacked and was still sealed. Kamm approached the claimant, who maintained that she had unpacked the box but had resealed it because it was

coming apart. She asserted that she had checked each of the individual packages, which she asserted contained soft-sided glasses cases, by pressing down on them to ensure that there were no glasses left in the cases. Kamm told the claimant that she would be looking into the matter further.

Kamm spoke further with Coleman, and learned that the vendor sealing tape on the box had actually still been intact, indicating that it had never been opened, and that the glasses cases inside had actually been hard-sided cases rather than soft-sided cases. She then took the matter to higher management to determine what action should be taken. The employer's business was closed on December 24 and December 25, and on December 31 and January 1. The employer did not make the decision that because of the apparent dishonesty it would need to discharge the claimant until January 10, at which time the claimant was discharged.

The claimant established a claim for unemployment insurance benefits effective January 22, 2012. She reopened that claim by filing an additional claim effective January 6, 2013. Upon expiration of the 2012 claim year she established a second claim year effective January 20, 2013. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant asserted that her claiming the unpacking of the box was a simple error on her part, that she had only assumed that she had done the work. However, she could not explain why she could provide such detail to Kamm on her alleged work if it had only been an error, as compared to recognizing and admitting immediately that she had included the work in error. 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 claimant did not do the work as claimed and further provided false information when questioned about the claimed work. The

claimant's dishonesty shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. *White v. Employment Appeal Board*, 448 N.W.2d 691 (Iowa 1989).

There is some concern as to whether there was a current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988). However, the employer informed the claimant that there would be a further inquiry immediately upon being informed of the incident; that notification prevents the delay that occurred while the employer was further appealing the situation from making the conduct too distant to be "current." *Greene*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's February 4, 2013 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 10, 2013. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css