

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANNON MILES

Claimant

APPEAL NO. 11A-UI-10620-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

KOHL'S DEPARTMENT STORES INC

Employer

OC: 07-17-11

Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 5, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 6, 2011. The claimant provided a phone number prior to the hearing but was not available at that number when called for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Jeff Rogan, district loss prevention manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time human resources operations manager for Kohl's Department Stores from August 23, 2001 to July 15, 2011. She was discharged for falsely recording two employees' time worked, taking property from the employer, and conduct not in the employer's best interest. On June 27, 2011, District Loss Prevention Manager Jeff Rogan received an email from the in-house loss prevention manager for the Kohl's store in Coralville, Iowa, stating an associate reported the claimant was observed eating a Godiva chocolate bar at her desk that had been marked as out of stock and should have been thrown away. Mr. Rogan began an investigation into when the Godiva chocolate was marked out of stock, who purchased it, the inventory of chocolate and then reviewed the video of purchases and did not find that the claimant purchased any chocolate. After finding a time he could drive from Davenport to Coralville to conduct an interview with the claimant, a meeting was scheduled July 12, 2011. The claimant admitted eating the candy bar and told Mr. Rogan she had also taken two tins of chocolate as well. She said she knew it "was wrong" and "it wouldn't happen again." Mr. Rogan asked if she had done anything else that was unethical and the claimant also stated she marked a frame as out of stock to give it to an employee who was a "hard worker." The claimant then told him she had changed two employees' time cards so they would not

receive overtime. The claimant provided the employer with a written statement about her actions and her employment was terminated July 15, 2011, after the employer went back and found the edited time cards and paid the employees whose time cards were altered what they were owed.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant admitted taking one Godiva chocolate bar and two tins of chocolate in addition to giving an employee a frame she marked as out of stock for being a good worker. Additionally, she edited two employees' time cards so they would not receive overtime, as overtime is discouraged by the employer. The claimant's above-stated actions violated the employer's policies regarding taking of property from the store and falsifying time worked by an associate, and both were not in the best interest of the employer. Under these circumstances, the administrative law judge concludes the claimant's

conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

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 section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The August 5, 2011, 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 received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw