

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE SOLOMON
Claimant

APPEAL NO. 09A-UI-05689-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENSCRAFTERS INC
Employer

**Original Claim: 03/15/09
Claimant: Respondent (2/R)**

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

STATEMENT OF THE CASE:

Lenscrafters, Inc. (employer) appealed a representative's April 1, 2009 decision (reference 01) that concluded Kyle Solomon (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 May 13, 2009. The claimant participated in the hearing. Connie Hickerson of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Chrystal Linsteadt and Raye Reynolds. 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?

FINDINGS OF FACT:

The claimant started working for the employer on October 22, 2008. He worked full time as an optical team member at the employer's Davenport, Iowa, optical department inside a client retail store. His last day of work was February 10, 2009. The employer discharged him on that date. The stated reason for the discharge was having an unauthorized family member in the work area contrary to the employer's policies and contrary to verbal instructions and failure to accurately report time worked.

The final incidents that led to the discharge occurred on January 31, 2009; the claimant left on vacation the next day through the next week, returning February 9. He was discharged the next day. On January 31 the claimant was scheduled to work from 9:00 a.m. to 6:00 p.m. The claimant's wife was in the work area of the department a significant portion of the day. She was there for a substantial period in the morning, generating a subsequent complaint by a customer that the claimant was occupied in speaking with his wife as the customer was seeking service. She was there in the early afternoon when Ms. Reynolds, the team manager, came into the department at around 2:15 p.m. and queried of the claimant why his wife was in the department;

the claimant assured her that his wife had just recently come to join him on a break. She was also there at around 3:00 p.m. when the retail store manager saw her in the department and at around 4:00 p.m. when the retail store manager finally spoke to the claimant and directed that his wife not remain in the department. His wife was again in the department at approximately 5:30 p.m.

During the day on January 31, there were at least three occasions when the claimant left the department with his wife for over 15 minutes at a time, but he did not record any break or lunch on his time record.

The claimant had received some prior warnings for other issues, but most recently had been given a warning on January 16 for not obtaining proper approval for closing the store early on January 12. That warning indicated that further violations including “unprofessional behavior will result in further corrective action up to and including termination of employment.”

The claimant established a claim for unemployment insurance benefits effective March 15, 2009. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$940.00.

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 that 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 that 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's blatant disregard of the employer's prohibition against having unauthorized persons in the work area, particularly after having the question posed to him by his manager in the early afternoon and again after being directly instructed by the client store manager later in the afternoon, 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. 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 overpayment should be recovered under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's April 1, 2009 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 10, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he 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/kjw