

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KARI RHOADES**  
Claimant

**APPEAL NO. 07A-UI-01185-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PETSMART INC**  
Employer

**OC: 12/31/06 R: 03**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Petsmart, Inc. (employer) appealed a representative's January 23, 2007 decision (reference 01) that concluded Kari Rhoades (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 February 19, 2007. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Pixie Allan of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Crystal Watson and Roseanne Osweiler. Based on the evidence, the arguments of the employer, 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 August 30, 2005. She worked part-time (approximately 20 hours per week) as a pet care associate at the employer's Cedar Rapids, Iowa, store. Her last day of work was December 13, 2006. The employer discharged her on that date. The stated reason for the discharge was being dishonest in connection with the employer's investigation into an incident.

On December 12, the claimant was hand feeding a bird and the bird flew off her arm and fell into a tub of disinfectant. The claimant did not immediately call the manager on duty, Ms. Osweiler, to report the incident or to ask for direction as required by the employer's policies. Rather, she washed the bird off with water and then took the bird into the dog grooming salon. The claimant was not certified to be in the salon and pursuant to the company policies was not to be in that area. While in that area the claimant used a dryer that was used to dry dogs to blow dry the bird. A groomer in the area told the claimant she should not be drying the bird that way, but the claimant continued. Ms. Osweiler happened across the claimant while doing a walkthrough and also told the claimant she should not be using the dryer to dry the bird as the bird might catch a respiratory infection from using the dryer used on the dogs.

The bird was dead when Ms. Watson, the store manager, came into the store on December 13. In investigating the situation, she spoke with both the groomer and Ms. Osweiler. Before speaking with the claimant, she was prepared to just give the claimant a warning regarding her actions. However, when Ms. Watson asked the claimant what happened, the claimant denied that she had been told that she should not be salon using the dryer on the bird and asserted that she had reported the matter to Ms. Osweiler. After concluding that the claimant was not being candid and was misrepresenting the facts, Ms. Watson determined to discharge the claimant.

The claimant established a claim for unemployment insurance benefits effective December 31, 2006. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$476.00.

### **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.

Iowa Code § 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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer’s interest, or
    2. The employee’s duties and obligations to the employer.

The claimant's dishonesty to the employer on the investigation of the incident 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), The employer discharged the claimant for reasons amounting to work-connected misconduct.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's January 23, 2007 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of December 13, 2006. 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 claimant is overpaid benefits in the amount of \$476.00.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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