

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEVIN M PICKERING**

Claimant

**APPEAL NO. 12A-UI-09984-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEST BUY STORES LP**

Employer

**OC: 07/15/12**

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

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated August 9, 2012, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 11, 2012. The claimant failed to respond to the hearing notice and did not participate. The employer was represented by David Williams, home sale manager. The employer was represented by Connie Hickerson, who is affiliated with TALX.

**ISSUES:**

Whether the claimant was discharged for misconduct; and

Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was a part-time sales associate at the Best Buy Store located in Jordan Creek Mall. The claimant was a “pre-holiday” hire, which means he was hired in either October or November of 2011. The claimant’s last day of work was July 12, 2012. He was terminated on July 12, 2012.

In early July 2012, the claimant’s purchases using his employee discount came to the employer’s attention. Employees are given an employee discount to purchase items from the employer. One of the rules, of which the claimant was aware, was that the purchase must be made by the employee. What the employer originally noticed was that the claimant had purchase about one thousand dollars of care audio equipment and there were frequent exchanges of the equipment. These actions strongly suggested to the employer that something suspicious was occurring.

The employer then went through all of the claimant's purchases. The employer discovered that on January 6, 2012, the claimant's grandmother purchased some items and the claimant's discount was used. This is a violation of the employer's policy on use of the employee discount. There is zero tolerance because the employer believes that this is an integrity issue. The claimant was given copies of all rules and he signed written acknowledgements. He also took two online training courses on integrity policies.

The claimant was informed prior to his termination that an investigation was being conducted. The claimant knew his job was in jeopardy. The claimant was terminated on July 12, 2012.

## **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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the

worker's duty to the employer. One of the most fundamental duties owed by an employee to an employer is honesty. An employer can also reasonably expect that an employee will follow all known policies. The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant was discharged for misconduct. The claimant was given an employee discount. There were specific rules that applied to the use of that discount. The claimant knew about the rules and had even take online training on what the employer viewed as integrity issues. Despite that knowledge, the claimant allowed his grandmother to purchase items using his employee discount.

The administrative law judge also concludes that the claimant was discharged for a current act of misconduct. Although the claimant's improper purchase took place in January 2012, the employer did not discover it until there was an investigation of other transactions done by the claimant in early July 2012. The employer does not routinely review employee purchases due to the large volume of those purchases. The employer told the claimant that he was under investigation and that his job was in jeopardy. Not more than ten days elapsed between the time the employer found out about the transaction and termination. Given these circumstances, the discharge is deemed to be for a current act of misconduct. Benefits are therefore denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the Claims Section for determination.

**DECISION:**

The representative's decision dated August 9, 2012, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw