

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN P FARRELL**  
Claimant

**APPEAL NO: 11A-UI-01349-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VON MAUR INC**  
Employer

**OC: 01/02/11**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's January 27, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Brenda Lindell, the store manager, and Brenda Goodnogh, the floor manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

In November 2006 the claimant started working for the employer as a full time sales associate in the men's sportswear department. When the claimant was hired, the employer informed him that employees were not allowed to hold merchandise for themselves. Also, if merchandise was transferred in from another store for an employee, the merchandise had to be purchased within two days or returned.

On January 28, 2010, Goodnogh, accidentally discovered two shirts wrapped in brown tissue in the bottom drawer of an antique hutch. This was not a place where merchandise was usually kept or stored. The employer made arrangements for a surveillance camera to be set up to find out if anyone removed the shirts. Between February 8 and March 8, 2010, the surveillance camera revealed the claimant going to the drawer several times and opening the drawer. On March 8, the employer noticed a merchant transfer for shirts in the claimant's size. The transfer of merchandise was for "Andrew." On March 8, the surveillance camera showed the claimant removing the shirts from the hutch drawer, scan the shirts and place them back with the rest of the merchandise.

After reviewing the surveillance camera, the employer was unable to talk to the claimant about what he had done on March 8 until March 16, 2010. On March 16, the claimant told the

employer the transferred merchandise for Andrew was the claimant. The claimant also acknowledged he held the shirts to see if they would be marked down. If the employer marked them down, he planned to buy the shirts. When the shirts had not been marked down, he put them back with the other merchandise. On March 16, 2010, the employer discharged the claimant for violating the employer's policy that prohibits employees from holding merchandise for themselves.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Although the claimant asserted he transferred two shirts from another store for himself in late February or early March 2010 and only held them for a week, Goodnogh saw the shirts in the antique hutch on January 28, 2010. The employer then monitored the hutch and did not see the claimant remove the shirts until March 8, 2010. Since this incident happened a year ago, the claimant may have inadvertently shortened the time he held the shirts. Given Goodnogh's testimony that she personally saw the shirts in the antique hutch on January 28 and then a surveillance camera was set up to record the area around the hutch, the employer's testimony is more credible than the claimant's testimony. The findings of fact reflect the employer's version of events.

The claimant knew and understood the employer did not allow employees to hold merchandise for themselves. The claimant intentionally violated this policy by holding a couple of shirts, even if just for week. The claimant committed work-connected misconduct. Therefore, as of January 2, 2011, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

**DECISION:**

The representative's January 27, 2011 determination (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 2, 2011. This disqualification continues until he 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 issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css