

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SIERRA M OYEN
Claimant

APPEAL NO: 10A-UI-13845-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENSCRAFTERS INC
Employer

**OC: 08/29/10
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 27, 2010 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 responded to the hearing notice, but was not available for the hearing. Tom Kuiper represented the employer. Bobby Beasely, Laurie Gonzalez and Wesley Hunt appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits. Employer Exhibits One and Two were offered and admitted as evidence.

ISSUE:

Did the employer discharge the claimant for reasons that constitute a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 2009. She worked as a full-time optical associate. Wes Hunt became her supervisor on August 1, 2010.

On July 28, Gonzales, a loss prevention manager, became aware through the employer's Ethics and Compliance Hotline that the claimant discounted or did not charge a customer for an eyewear protection plan. (Employer Exhibit One.) The employer never discounts eyewear protection plans. The claimant's improper discount became known on July 28, when a customer, M.K., asked the employer for a receipt to confirm she had purchased eyewear protection earlier that month. It was then discovered the claimant had discounted the eyewear protection 100 percent so M.K. received this plan for nothing. As a result of M.K. asking for a receipt and discovering the claimant had not charged her for the eyewear protection plan, a co-worker talked to the claimant on July 28 about failing to charge customers for eyewear protection plans. The claimant understood she was making mistakes when giving eyewear protection plan discounts to customers. (Employer Exhibit Two.)

In addition to M.K., the employer discovered the claimant did not charge a customer for two eyewear protection plans on July 28 and another customer was not charged on July 30. On August 24, Gonzales talked to the claimant about her understanding of the employer's discount policy. After talking to the claimant, Gonzales understood that the claimant understood the employer's eyewear policy was not to be discounted and already knew she had not charged some customers for the eyewear protection plan. The claimant indicated she had made a mistake and was not careful enough when she was busy. (Employer Exhibit Two.)

The employer discharged the claimant on August 31 for violating the employer's no discount policy for eyewear protection when she knew the employer did not discount this plan for anyone and a co-worker had talked to her about not discounting this plan on July 28.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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).

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. 871 IAC 24.32(8).

Since the claimant knew on July 28 she had not charged a customer for an eyewear protection plan and a co-worker reminded her that this plan could not be discounted, the fact the claimant again failed to charge a customer for this plan on July 30 amounts to an intentional disregard of the employer's interests. If the employer had acted in a timely manner instead of waiting to talk to the claimant until August 24 and then discharging her on August 31, the employer would have established that the claimant was discharged for a current act of work-connected misconduct. By waiting until August 24 to talk to the claimant about this issue and letting her know that her job was in jeopardy, the employer did not establish that the claimant was discharged for a current act of work-connected misconduct. Therefore, the claimant is qualified to receive benefits.

DECISION:

The representative's September 27, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. As of August 29, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs