

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

KEVIN S WILSON  
307 MITCHELL ST SW  
CEDAR RAPIDS IA 52404

KOHL'S DEPARTMENT STORES INC  
c/o JON-JAY ASSOCIATES  
PO BOX 182523  
COLUMBUS OH 43218

**NUNC PRO TUNC**  
**Appeal Number: 05A-UI-05557-SWT**  
**OC: 04/24/05 R: 03**  
**Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 17, 2005, reference 01, that concluded the claimant was discharged but that misconduct had not been proven. A telephone hearing was held on June 13, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Sean Califf participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a loss prevention supervisor from August 7, 2001, to April 29, 2005. The claimant had been trained on the steps required to apprehend suspected shoplifters. On December 23, 2005, the employer issued a written warning to the

claimant because he had failed to follow the proper steps in detaining a suspected shoplifter on December 3. He was informed that he could be terminated if he committed any similar conduct in the future.

On April 18, 2005, the claimant noticed two suspected shoplifters enter a fitting room carrying merchandise. When they left the fitting room, they were only carrying their purses. Under the employer's policy, the claimant was required to have a female employee inspect the stall to verify that the suspects had not left the merchandise there.

The claimant decided to skip the required step because there was no female employee immediately available and approached the women while they were in their car taking the merchandise out of their purses. He detained the women until the police arrived. Under the circumstances, the claimant was not allowed to stop the women without first checking the fitting room stall. The claimant had the fitting room stall checked after the women were apprehended, and no merchandise was in the stall.

Later, the claimant prepared a report that dishonestly reflected that he had checked the stall before he had apprehended them, which was untrue. He did this to cover up the fact that he had neglected to follow the employer's policy for apprehending shoplifters.

On April 25, 2005, an employee notified the claimant supervisor, Sean Califf, that the claimant had violated company policy in apprehending the shoplifters on April 18. When Califf reviewed the claimant's report with him, the claimant represented that the fitting room stall had been checked prior to his approaching the vehicle. The claimant later retracted that and admitted that the fitting room stall had not been checked until after the shoplifters had been apprehended.

Califf reported the matter to human resources and recommended that the claimant be discharged. On April 29, 2005, Califf discharged the claimant for violating the employer's shoplifting apprehension policies.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 24, 2005. The claimant filed for and received total of \$1,550.00 in unemployment insurance benefits for the weeks between April 24 and June 4, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. Even in the hearing, the claimant was evasive when asked about whether he followed the proper steps in apprehending shoplifters on April 18 and whether his report accurately stated what had occurred. He insisted that he had "done all the steps" but knew that the steps had to be done in a certain order. He asserted that all of his reports were written "the same way" but it is clear from reading the report, that the claimant was trying to conceal the fact that the fitting room stall was not checked until after the shoplifters were apprehended.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of honest behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits, and was overpaid \$1,550.00 in benefits for the weeks between April 24 and June 4, 2005.

DECISION:

The unemployment insurance decision dated May 17, 2005, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$1,550.00 in unemployment insurance benefits, which must be repaid.

saw/pjs/pjs