

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FREDRICK TURNER
Claimant

APPEAL NO. 09A-UI-17388-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

**Original Claim: 10/11/09
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 3, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 28, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Alex Leon participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as a surveillance camera monitor from August 28, 2006, to October 13, 2009. He was informed and understood that under the employer's work rules, only management employees were allowed in the camera room. On September 19, 2009, the claimant's supervisor, Alex Leon, reminded the claimant about this work rule.

On October 10, 2009, the claimant willfully violated the employer's work rule by allowing a female sales associate to come in the camera room to socialize. At some point during their conversation, he and the associate kissed. They exchanged phone numbers, and the associate left.

On October 11, the associate reported to Leon that she and the claimant were making out in the camera room, and he pressured her to have sex.

When the claimant was confronted about what happened on October 13, he initially denied anything had happened. He later admitted he had allowed the associate in the camera room and they kissed, but insisted that what had happened was mutual.

The employer discharged the claimant on October 13 for violating the employer's work rule by allowing an associate in the camera room.

The claimant filed for and received a total of \$3,949.00 in unemployment insurance benefits for the weeks between October 11 and December 26, 2009.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 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 unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated November 3, 2009, 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 matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw