

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETTY J KREBS
Claimant

APPEAL NO. 10A-UI-12009-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEVENTH AVENUE INC
Employer

OC: 08/01/10
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 25, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 14, 2010. Claimant participated and was represented by John Grauppman of HELP Legal Assistance. Employer participated through human resources assistant manager Lynn Rankin. Employer's Exhibit 1 (fax page numbers 3 through 18) was admitted to the record. Claimant's Exhibit A (fax pages 3 through 14) was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a quality assurance inspector and trainer from 1994 and was separated from employment on August 4, 2010. She had two criminal theft convictions (arrest March 20, 2009 and convictions for 3rd and 5th degree theft May 19, 2009) according to a background check conducted on July 14, 2010, with the results received on July 15, 2010. Coworkers found out about the convictions and notified management on June 24, 2010. Employer interviewed claimant on July 23 and provided her with the information received and rights under the Fair Credit Reporting Act. She responded in writing on July 29, 2010. The employer's policy provides for discipline, including termination, upon evidence of a recent (within seven years) and "substantially related conviction" to the employment. Claimant had access to customers' account numbers, names, addresses, and phone numbers and worked with clothing and furniture items in quality assurance of order fulfillment. The theft convictions were the result of her having stolen a purse and clothing from Von Maur. She attributed the action to a depression related to her son's death in a car accident and her mother's death. Employer conducted background checks of all employees on October 1, 2009 but claimant's theft convictions did not show up on the reports at the time. The 2010 check was in response to an employee report. Although other employees may have theft convictions in their background check, the convictions were not recent.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Although the ALJ is sympathetic to her personal losses, it does not excuse the conduct. Claimant's recent theft conviction for shoplifting was substantially related to her employment in that she had access to both merchandise and customer information in the performance of her job duties. The employer has established a sufficient nexus between the conviction, the employment duties, and violation of the policy in order to establish job related misconduct. See, *Kleidosty v. EAB*, 482 N.W.2d 416, 418 (Iowa 1992). Benefits are denied.

DECISION:

The August 25, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs