

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

JAIME L FISHER
904 – 8TH ST SW #18
ALTOONA IA 50009

VON MAUR INC
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-00857-CT
OC: 08/17/03 R: 02
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Von Maur, Inc. filed an appeal from a representative's decision dated January 16, 2004, reference 04, which held that no disqualification would be imposed regarding Jaime Fisher's separation from employment. After due notice was issued, a hearing was held by telephone on February 16, 2004. The employer participated by Bruce Hughes, Regional Loss Prevention Manager, and Joy Martin, Regional Director of Stores. Ms. Fisher did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Fisher was employed by Von Maur, Inc. from August 25 until December 12, 2003 as a part-time sales associate in the clothing department. She was discharged for theft from the employer.

When customers return merchandise to Von Maur, Inc., they can receive a gift card for the amount of the return. Ms. Fisher and another associate were processing fraudulent returns and issuing gift cards to themselves for the dollar amount of the fraudulent returns. A loss prevention associate observed Ms. Fisher engage in what was considered to be suspicious activity and, therefore, monitored her activities. She was observed placing gift cards in her waistband, sales book, or other hidden locations. The total amount she fraudulently issued to herself in gift cards was \$1,092.86, representing six separate transactions. When confronted by the employer, she acknowledged her theft. The employer filed criminal charges and Ms. Fisher entered a plea of guilty to a charge of theft in the third degree. Her admitted theft was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Fisher was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Fisher was discharged for stealing \$1,092.86 from her employer. She acknowledged her theft to the employer and entered a plea of guilty to criminal charges filed in relation to the theft. Theft is clearly contrary to the standards an employer has the right to expect. For the above reasons, the administrative law judge concludes that disqualifying misconduct has been established. Accordingly, benefits are denied.

No overpayment results from this reversal of the prior allowance as Ms. Fisher has not been paid benefits on her additional claim filed effective December 7, 2003.

DECISION:

The representative's decision dated January 16, 2004, reference 04, is hereby reversed. Ms. Fisher was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/b