

**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**

**MATTHEW D SLYTER
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**VON MAUR INC
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**Appeal Number: 06A-UI-02401-H2T
OC: 01-29-06 R: 04
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/Misconduct
Section 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 15, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 17, 2006. The claimant did participate. The employer did participate through Carrie Menke, Regional Director (representative) and Holly Lemmer, Floor Manager. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a sales associate in the women's shoe department full time beginning August 23, 2004 through January 23, 2006 when he was discharged.

On January 23, 2006, the employer discovered that the claimant had falsified four separate transactions in an effort to secure his own commissions and to insure that any deductions that should have been made from his commission check were deducted from another coworker's check.

The first transaction occurred on January 3, 2006. A customer returned a women's garment and the commission was deducted from the wrong sales associate's commission. No receipt was used to make this return and the claimant entered a coworker's sales associate's number and had the commission deducted from her wages. The claimant should have entered a generic sales associate number so that no one person's commission would be charged back for the return when it was not known who the initial sales associate was. The sales associate the claimant chose to deduct the commission from was not the selling associate and should not have had the commission deducted from her wages. The claimant worked on January 3, his coworker, Tara, did not.

On January 13, 2006, a pair of shoes sold by the claimant were returned by a customer. It is possible to tell which sales associate originally sold the shoes, because all sales associates write their sales associates number on the cover of each shoe box when they sell a pair of shoes. The claimant processed the return of the shoes he initially sold, but instead of charging back the commission to his own account, he charged it back to his coworker Sara's commission. This meant that a commission was incorrectly deducted from Sara's wages. The claimant worked on January 13 and his coworker, Tara, also worked this day.

On January 15, 2006, the claimant again deducted a return commission from his coworker Sara's account even though she was not the selling associate. The claimant specifically entered in Sara's sales associate number into the transaction and deducted the commission from her wages. The claimant should have just entered that there was no receipt and that would have assigned the commission to a generic account and Sara would not have been charged back for a commission. The claimant's coworker, Tara, did not work on January 15, the claimant did.

On January 17, 2006, a pair of women's shoes sold by the claimant was again returned and the claimant again incorrectly charged the commission back to his coworker Sara's account. The claimant intentionally changed the return so that the commission would be charged against Sara's account and not against his. By engaging in incorrect fraudulent chargebacks the claimant was in effect stealing commissions from another coworker. The claimant worked on January 17, his coworker, Tara, did not.

The claimant knew how to properly charge back a commission.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

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 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 claimant alleges that his coworker, Tara, was incorrectly entering his sales associate number in an effort to set him up to make it appear as though he were stealing commissions from his coworker, Sara. The claimant's argument is not persuasive in light of the employer's own time records that show Tara only worked one time when the four suspect transactions occurred. The employer established that it is not possible to override the cash register's date and time stamp. Three of the four suspect transactions had to be done by someone other than Tara because she did not work when the transactions were completed. The transactions benefited the claimant. The claimant should have suffered deductions to his commission when returns of shoes he sold were made but he did not because the commission was incorrectly charged back to another employee's account. The administrative law judge is persuaded that the claimant made the incorrect chargebacks and in essence stole commissions from his coworker, Sara. The claimant's actions constituted disqualifying misconduct. Benefits are denied.

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.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The February 15, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,651.00.

tkh/kkf