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

Appeal Number: 06A-UI-00640-S2T
OC: 12/11/05 R: 04
Claimant: Respondent (1)

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.

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(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Walgreen Company (employer) appealed a representative's January 9, 2006 decision (reference 01) that concluded Robin Kothenbeutel (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 2, 2006. The claimant was represented by David Millage, Attorney at Law, and participated personally. The employer was represented by Doretha Washington, Hearings Representative, and participated by David Brandt, Loss Prevention Supervisor, and Rich Birley, Store Manager. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on August 26, 2002, as a full-time beauty advisor. The employer did not issue the claimant any warnings during her employment. The store had a habit under two store managers of using coupons to balance the cash drawers at the close of store. There was also a common practice of using a beauty coupon by a manufacturer for a particular item toward the purchase of any item produced by that manufacturer. If there was a doubt about redemption of the coupon, the cashier was to bring the coupon to the store manager's attention. These policies did not appear in writing.

On December 3, 2005, the claimant, as a customer, took nine Max Factor products along with other items to the cashier for purchase. The claimant gave the cashier nine $2.00 off Max Factor coupons for the product Lash Perfection. The claimant's Max Factor products did not include Lash Perfection. The cashier gave the claimant $18.00 off of her total bill due to presentation of the coupons. The cashier did not seek instruction from the store manager at the time of the sale but later consulted the store manager about the use of the coupons. The store manager investigated. On December 6, 2005, the employer terminated the claimant for fraudulent use of coupons.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons, the administrative law judge concludes she was not.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer has not established that the claimant used the coupons with fraudulent intent. While employee dishonesty is contrary to the standard of behavior the employer would have a right to expect, the claimant was never dishonest in her actions. She admitted she used the coupons because she did not understand the store policy regarding coupons. Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of her lack of training by the store manager. In addition, the claimant was acting as a customer at the time of purchase, not an employee. If there were issues with the use of the coupons, the cashier would bear more of the responsibility than the customer. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 9, 2006 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

bas/kjw