

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

KATIE A CANNON
4724 FOX LANE NE
IOWA CITY IA 52240

PARISIAN VIRGINIA LLC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-05042-DWT
OC 04/04/04 R 03
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 are 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

STATEMENT OF THE CASE:

Parisian Virginia LLC (employer) appealed a representative's April 22, 2004 decision (reference 01) that concluded Katie A. Cannon (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 26, 2004. The claimant participated in the hearing. Kathy Wasion, an assistant human resource representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 15, 2003. The claimant worked as a part-time sales associate. Wasion was the claimant's most recent supervisor. One of the employer's rules informs employees they cannot take home free gifts from vendors that are to be used as a gift with purchases for customers unless a manager or a vendor gives the employee permission to take the item home.

The claimant's two previous managers told the claimant to take home items that were to be used as gifts with a purchase for customers. In early March 2004, the claimant took home a duffel bag that was to be given away to customers who bought certain merchandise. The claimant did not receive a manager's authorization to take home the item. The employer's security loss prevention team saw the claimant take the duffel bag in early March. When the employer talked to the claimant, she admitted she took home the bag because she understood she could take the item home. Since the claimant had six other write-ups in her personnel file for various problems, the employer decided to discharge the claimant on March 20, 2004.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established business reasons for discharging the claimant. Based on an accumulation of prior write-ups, the employer discharged the claimant. The evidence indicates that if the claimant did not have the other written warnings, she would not have been discharged for the most recent incident. Even though the claimant did not request Wasion's permission to take home a free gift in early March, the claimant assumed she could take it home because previous managers encouraged her to take these items home. Based on her previous experience, the claimant's assumption that she could take the duffel bag home was not unreasonable. The claimant at most used poor judgment when she failed to specifically ask

Wasion if she could take a free duffel bag home. A preponderance of the evidence establishes that the claimant did not intentionally or substantially disregard the employer's interests. The claimant did not commit a current act of work-connected misconduct. Therefore, as of April 4, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 22, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of April 4, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b