

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN K CARSTEN
Claimant

APPEAL NO: 14A-UI-11108-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TJX COMPANIES INC
Employer

OC: 09/21/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 14, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated at the November 14 hearing. Deanna Lawton, the district loss prevention manager, appeared on the employer's behalf.

The parties agreed another appeal, 14A-UI-11144, covered the same employment separation and the same parties were involved. The two listed employers on the appeals are the parent company and a subsidiary. Appeal for 14A-UI-11144 was scheduled for a hearing on November 17, 2014 at 8 a.m. The parties agreed the appeals for this appeal and 14A-UI-11144 should be consolidated and both appeals will be addressed in the November 14 hearing and subsequent decisions.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in September 2009. She worked 20 to 24 hours a week as a store detective.

During her employment, the claimant received an April 28, 2014 written warning for failing to properly notify Lawton when the claimant contacted the local police about on April 5, 2014 incident. The employer gave her the written warning for improper job procedure.

On August 25, the claimant closed the store. She also attended a store meeting at the end of the shift. The claimant inadvertently left her personal notebook at the front of the store. Inside the notebook, the claimant had her user ID and passwords recorded. She also made some notes about observations she made about the store manager and assistant store manager.

The store manager found the notebook when she opened the store the next morning. The store was not yet open to the public when the store manager found the notebook. The store manager secured the notebook so it was not available for anyone else to see. The claimant did not work on August 26. The store manager reported to Lawton that she had found the claimant's notebook. The store manager had not known the claimant was investigating her. The store manager told Lawton about the claimant's notes. The claimant had not talked to Lawton or received authorization to do an investigation on the store manager or assistant store manager. The claimant must receive Lawton's authorization before she starts any investigation.

When the claimant reported to work on August 27, Lawton was at the store. Lawton handed the claimant her notebook and told the claimant she had left it unsecured at the front of the store. The employer's security policy informs employees that IDs and passwords are to be kept secured at all times. Lawton also told the claimant she had not been authorized to do any surveillance on the manager or assistant manager.

Before Lawton talked to the claimant, she talked to the employer's human resource personnel. In addition to receiving the April 28 written warning, the claimant had also received warnings for unsatisfactory job performance. The employer decided that even if the claimant had not received previous warnings, she would be discharged for failing to keep her ID and passwords secured and for performing an unauthorized surveillance. The employer discharged the claimant on August 27, 2014.

The claimant established a claim for benefits during the week of September 21, 2014. She has filed weekly claims and received benefits since she established her unemployment insurance claim.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to 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 claimant misplaced her notebook the evening of August 25, 2014. The fact the claimant misplaced her notebook and did not secure it amounts to an isolated negligent incident. This isolated incident does not amount to work-connected misconduct.

Even though the claimant noted an observation about the store manager and assistant manager, a noted observation does not mean she was investigating either person. It was natural for the store manager to question why the claimant noted an observation, but the evidence does not establish the claimant was investigating either person. Since the claimant had received previous warnings for unsatisfactory performance issues and had previously failed to timely notify Lawton about an issue at the store, the employer established business reasons for discharging the claimant. The facts do not establish that the claimant intentionally disregarded the employer's rules or interests. The claimant did not commit a current act of work-connected misconduct. As of September 21, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's October 14, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reason, but the claimant did not commit work-connected misconduct. As of September 21, 2014, the claimant is qualified to receive benefits. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs