

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL K BAGUR
Claimant

APPEAL NO. 09A-UI-19632-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 11/29/09
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 23, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 10, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Sherri Oelschlager participated in the hearing on behalf of the employer with a witness, Londen Nelson.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer from December 31, 2008, to December 2, 2009. He started as an assistant manager and was promoted to the position of store manager in August 2009. The claimant was informed and understood that under the employer's work rules, employees could be discharged for a failure in honesty and integrity.

On November 13, 2009, the claimant was doing the bookwork necessary to prepare the bank deposit for November 12. In the documentation he prepared, he adjusted five money drops that had been made by cashiers into the safe the previous day down to zero. The money drops totaled over \$600.00.

On November 15, the claimant adjusted a drop ticket from November 14 from \$199.00 down to \$50.00.

On November 17, the area supervisor, Sherri Oschlager, conducted an audit of the income and bookwork for the previously days that included the books for November 14. The outcome of the audit was Oschlager discovered a \$146.00 discrepancy between the amount written on the deposit slip and what the store's receipts were for the day.

When Oshlager confronted the claimant about the missing \$146.00 and asked where it was, the claimant had no explanation. The claimant asked what was going to happen, and Oshlager said she would have to report the shortage to her supervisor. After Oshlager left the building, the claimant took \$146.00 out of his pocket and put it in an envelope. He went outside and stopped Oshlager from leaving. He falsely told her he had found the money beside the printer. Later, Oshlager reviewed surveillance video and viewed the claimant taking the money out of his pockets. When confronted regarding what the video showed, the claimant said he had some extra money and decided to give the money to resolve the issue.

On November 18, the accounting department discovered the over \$600.00 discrepancy in the books for November 12 and reported it to Oshlager. When Oshlager confronted the claimant about the discrepancy, he claimed that an assistance manager had done the bookwork that morning, which was untrue as Oshlager viewed video for that morning and the claimant had logged on the computer using the assistant manager's log on and changed the money drops. After being confronted with what the video showed, the claimant said he did not remember what had happened.

After completing her investigation, Oshlager discharged the claimant on December 2, 2009, for violating the employer's honesty and integrity policy.

The claimant filed for and received a total of \$2,334.00 in unemployment insurance benefits for the weeks between November 29, 2009, and February 6, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The evidence clearly shows the claimant was dishonest when he attempted to cover up the November 14 loss by pretending he found the cash shortage and shifted blame for the November 12 discrepancy by claiming the assistant manager had done the bookwork for that date. He provides no explanation for the changes in the drop tickets. He was responsible for the discrepancies on both days. He committed work-connected misconduct.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the

claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated December 23, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css