

Terry Horvath, an owner/operator who was a friend of the claimant. The claimant was borrowing money against Mr. Horvath's account. Both the claimant and Mr. Horvath admit that the claimant did not have his permission to access his account or to borrow any money from him. Mr. Horvath testified at hearing that had the claimant asked his permission to borrow the \$900.00 dollars from his account prior to making the transaction he would have denied her permission as he had bills of his own to pay. Mr. Horvath found out that the claimant had borrowed the money from his account when she left him a message on his cell phone approximately three days after completing the transaction. In order to get her coworker to approve the com check, the claimant lied to her by indicating that the money was an advance for Mr. Horvath himself. The claimant kept telling Mr. Horvath that she would pay him back, including telling him that her father had put a check in the mail for him. Mr. Horvath never received any check in the mail from the claimant's father and eventually he was not able to get the claimant to return his calls. When the claimant stopped returning or taking his calls, Mr. Horvath contacted Truckers Express and told them that one of their employees had taken money from his account without his permission. The employer investigated and discovered that the claimant, their employee, had stolen from one of their owner/operators, Mr. Horvath, and credited Mr. Horvath's account for the \$900.00 the claimant had taken. The claimant admitted making the transaction without Mr. Horvath's permission and she was discharged. The claimant has since made restitution to the employer for the \$900.00 she took from Mr. Horvath's account.

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 admits accessing and taking \$900.00 from Mr. Horvath's account without his permission. The claimant lied to a coworker in order to get the coworker to cut the com check. The claimant's actions amount to theft. The argument that since the claimant has repaid the money there is no harm to any party misses the point. The employer cannot trust an employee who steals from independent contractors who do business with the company. No operators would be willing to work for a company whose employees 'borrow' money from them without permission. It is not acceptable to take money from someone else's account without their permission even if it is paid back later. The claimant's actions constitute substantial misconduct. Benefits are denied.

DECISION:

The October 5, 2005, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

tkh/tjc