

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**YOLANDA D DRAINE**  
Claimant

**APPEAL NO: 14A-UI-11840-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 10/12/14**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits  
871 IAC 24.10 – Employer Participation

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed a representative's November 6, 2014 decision (reference 01) that concluded Yolanda D. Draine (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 8, 2014. The claimant participated in the hearing. Katie Cummings 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.

**ISSUES:**

Was the claimant discharged for work-connected misconduct? Was the claimant overpaid unemployment insurance benefits, and if so, is that overpayment subject to recovery based upon whether the employer participated in the fact-finding interview?

**OUTCOME:**

Reversed. Benefits denied. Overpayment subject to recovery.

**FINDINGS OF FACT:**

The claimant started working for the employer on September 20, 2013. She worked full time as a cashier/clerk at the employer's Cedar Falls, Iowa store, working on an overnight shift from 11:00 p.m. to 7:00 a.m. Her last day of work was the shift ending on the morning of January 29, 2014. The employer discharged her on that date. The stated reason for the discharge was theft of fuel.

On January 29 the store manager, Cummings, tracked back a \$10.00 shortage from January 28, finding that the claimant had self-authorized a prepayment of fuel to herself for \$14.00 but had only deposited \$4.00 into the drawer. Cummings then went back and found two

other transactions on January 3 and January 17 where the claimant had self-authorized prepayments of fuel to herself of \$35.00 and \$30.00, but then had only paid \$17.00 and \$4.00. Employees are not even to be self-authorizing fuel payments to themselves.

The employer reported the incidents to law enforcement, and criminal charges were filed. The charges were resolved with a finding of fifth degree theft, a simple misdemeanor, and the imposition of a fine by the court.

The claimant established a claim for unemployment insurance benefits effective October 12, 2014. A fact-finding interview was held with a Claims representative on November 5, 2014 at 10:50 a.m. The employer, through an unemployment insurance claims consultant with the employer's third party representative, participated directly in the fact-finding interview. The claimant has received unemployment insurance benefits after the separation in the amount of \$984.00.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's misappropriation of fuel shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the

employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a,-b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The representative's November 6, 2014 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 29, 2014. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account is not subject to charge. The claimant is overpaid \$984.00, which is subject to recovery.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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