

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY F MEDULAN
Claimant

THEISENS INC
Employer

APPEAL NO. 10A-UI-01950-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**Original Claim: 01/10/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 2, 2010, reference 01, that held she was discharged for misconduct on January 16, 2010, that denied benefits. A telephone hearing was held on March 16, 2010. The claimant participated. Bill Horrigan, Store Manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant began employment on April 26, 2006, and last worked for the employer as a full-time cashier on January 16, 2010. The employer has a policy that disciplines employees for cash shortages that exceed \$10.00. The employer issued a verbal warning to the claimant on July 14, 2009 for a \$15.99 cash shortage, a written warning for a \$10.00 cash shortage on September 25, and a suspension/warning on October 26 for a \$20.00 shortage. The employer discharged the claimant for a \$100.00 cash shortage on January 11 in light of the prior warnings.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on January 16, 2010, for repeated violations of the store's cash shortage policy.

The claimant knew the employer's policy due to prior warnings and a suspension, and her repeated violation for the same offense constitutes job-disqualifying misconduct. Negligence (or carelessness) does not constitute misconduct unless recurrent in nature (See Henry v. IDJS, 391 NW2d 731 (Iowa App. 1986)). The employer's standard set by policy is no shortage of \$10.00 or more, and the claimant's repeated acts of negligence or carelessness is misconduct.

DECISION:

The department decision dated February 2, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on January 16, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw