

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY LOGAN
Claimant

PARCO LTD
Employer

APPEAL NO. 09A-UI-08280-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**Original Claim: 05/03/09
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Parco, filed an appeal from a decision dated June 4, 2009, reference 02. The decision allowed benefits to the claimant, Ashley Logan. After due notice was issued, a hearing was held by telephone conference call on June 24, 2009. The claimant participated on her own behalf and with a witness, Julie Brent. The employer participated by Regional Manager Jason Larsen.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Ashley Logan was employed by Parco from March 14, 2009 until May 18, 2009 as a full-time crew member. On the night of May 4, 2009, she left early because she was ill and did not stay to be present when her cash register drawer was closed out and counted. The count showed a shortage of \$79.89. Regional Manager Jason Larsen interviewed all the managers on duty that night, those who counted the drawer and one who made change from Ms. Logan's drawer for a large bill that had been tendered from the drive through. The claimant was not present when the manager accessed her drawer for the change. There had also not been any counting of the drawer at the time she started her shift.

At the end of the investigation, the claimant was discharged by General Manager B.J. Cortum for violation of the cash-handling policy. It calls for discharge for any shortage or overage more than \$20.00.

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 reason the claimant was discharged was because her cash register drawer was short \$79.89; and under the company policy, any shortage more than \$20.00 is grounds for discharge. The claimant could not dispute the drawer was short, because she was not present at the time the drawer was closed out. But the employer has acknowledged other members of the staff had access to the drawer during the shift.

Parco has not established the claimant was personally responsible for the shortage of cash in the drawer. The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262(Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment benefits are two separate decisions. Pierce v. IDJS, 426 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984).

The employer has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of June 4, 2009, reference 02, is affirmed. Ashley Logan is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw