

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE M ROBINSON
Claimant

APPEAL NO. 07A-UI-10874-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RETAIL GROCERY INVENTORY SVC
Employer

OC: 10/28/07 R: 04
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Retail Grocery Inventory Services (employer) appealed a representative's November 16, 2007 decision (reference 01) that concluded Denise M. Robinson (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 11, 2007. The claimant participated in the hearing. Rick Siler appeared on the employer's behalf. During the hearing, Employer's Exhibits One, Two, and Three were entered into evidence. 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.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant resumed working for the employer on December 1, 1989. As of about June 16, 2007 she worked full time as district manager out of the employer's Bettendorf, Iowa, office. Her last day of work was October 25, 2007. The employer discharged her on that date. The stated reason for the discharge was misappropriation of company funds.

When the claimant was promoted to district manager she was to be allowed an advance of \$7,000.00 of petty cash to be kept in a separate bank account and to be used for per diem and other expenses of the team she oversaw. She was given a "Confirmation of Receipt of Petty Cash" to sign which stated that she had been given \$7,000 on July 7. She did not sign the receipt immediately, and the corporate office had to remind her several times to turn it in. She did sign and turn in the form on August 27, 2007.

By October 25 the employer was concerned that the claimant's team's performance was declining, and so had determined to drop the claimant back to an area manager position, which

would mean she no longer would be authorized to maintain the petty cash account. On October 25 Mr. Siler, operations manager, arranged to meet with the claimant; at that time he informed her of the reduction in her position. He further requested that she turn over or account for the \$7,000.00 petty cash. The claimant was only able to account for about \$3,825.00. She denied that she had actually ever been given a starting balance of \$7,000.00, indicating that she had only been given a check in the amount of \$3,000.00. The employer was unable to provide any accounting or financial records to verify that the claimant had either been given a check in the amount of \$7,000.00, or had been given a check for \$3,000.00 and then additional transfers of monies or reimbursements to make a starting total of \$7,000.00.

However, the claimant did admit that she had taken \$375.00 from the petty cash fund in approximately the first week or two of October to pay for a new cooking stove for her house due to the old stove causing a gas or carbon dioxide leak. She had intended on replacing the funds from her next paycheck. The petty cash funds were specified to only be used for proper business purposes. Upon concluding that the claimant was unable to account for about \$3,000.00 in petty cash funds plus the claimant's admission of using \$375.00 of the funds for a personal reason, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective October 28, 2007. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,735.00.

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. IDS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

Iowa Code § 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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

While the administrative law judge is not satisfied that the employer has established that the claimant actually had a starting balance of \$7,000.00 in petty cash so that as much as \$3,000.00 is unaccounted for, the claimant's admitted use of \$375.00 for a person purpose 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.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's November 16, 2007 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 25, 2007. 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 will not be charged. The claimant is overpaid benefits in the amount of \$1,735.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css