

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY H MCAFEE
Claimant

APPEAL NO: 13A-UI-10012-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK SHOP INC
Employer

OC: 07/07/13
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 22, 2013, reference 02, that held the claimant was not discharged for misconduct on July 4, 2013, and benefits are allowed. A telephone hearing was held on October 10, 2013. The claimant did not participate. Misty Hoskinson, Store Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUES:

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

Whether claimant is overpaid unemployment benefits.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on June 3, 2013, and last worked for the employer as a part-time store clerk on July 4, 2013. She received the employer cash limits in register policy.

From April 27, 2013 the employer issued claimant written disciplinary counseling on several occasions for cash shortages, cash overages, excessive voids, and laying cash on the register. The final incident was claimant having a \$160.00 cash shortage on July 4. The store manager observed a security video and observed claimant laying cash on the register rather than putting it in the drawer.

When confronted about the July 4 cash shortage, claimant told the manager she thought it was \$20.00. The employer discharged claimant for repeated acts of carelessness that were violations of the employer cash policy.

Claimant failed to respond to the hearing notice and the department call in record shows (APLT) she did not call in with a number to participate.

Claimant received unemployment benefits for the two weeks ending July 20 in the amount of \$266.00. The employer sent in a letter with documents about the employment separation for department fact finding.

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 employer has established claimant was discharged for misconduct in connection with employment on July 4, 2013 due to repeated acts of carelessness in violation of the employer cash handling policy.

The employer issued claimant a series of written counseling discipline that show she failed to properly handle cash. There were cash shortages, overages, excessive voids and laying cash on the register. Repeated acts of careless can rise to the level of misconduct where an individual is failing to follow store policy. Job disqualifying misconduct is established.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The administrative law judge further concludes claimant is overpaid benefits \$266.00 for the two weeks ending July 20, 2013 due to the misconduct discharge as held in this matter.

The issue whether claimant is granted relief from repayment of the overpayment is remanded to claims to issue a decision whether the employer representative participated in fact finding. The department will issue a decision on this issue.

DECISION:

The department decision dated August 22, 2013, reference 02, is reversed. The claimant was discharged for misconduct on July 4, 2013. 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. Claimant is overpaid benefits \$266.00 but the issue whether the employer participated at fact finding and should relief for repayment be granted claimant is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css