IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LORNA J GRIFFIN
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL NO: 12A-UI-14549-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/18/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Lorna J. Griffin (claimant) appealed a representative's December 12, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 17, 2013. The claimant participated in the hearing and was represented by Donna Bothwell, Attorney at Law. Treve Lumsden of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Adam Badgley. 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?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on September 15, 2011. She worked full time as a cashier at the employer's Council Bluffs, Iowa store. Her last day of work was November 18, 2011. The employer discharged her on November 21, 2012. The reason asserted for the discharge was improper cash handling.

The employer concluded that the claimant's drawer was short $108.53 on November 16, 2012. The employer was not able to determine the source of the shortage, whether it was in actual cash, or in checks or other transactions. It was not suggested that the claimant had misappropriated the moneys. The claimant believed that there was a specific transaction involving a check in the approximate amount of $108.53 which she might have mis-entered, but she did not have an opportunity to review the employer's calculations to attempt to reconcile the discrepancy. Because the shortage as determined by the employer was more than $100.00

and because of prior warnings on cash handling issues, the employer determined to discharge the claimant.

On November 16 the claimant had been given a written warning for having too much money in her drawer, considerably over the $100.00 level at which the employer's safety policy dictated that a cashier was to make a drop into the safe. The claimant indicated that the shift had been very busy and that she had not had an opportunity to make a safe drop because of a constant stream of customers. The warning indicated that her job could be in jeopardy if there were future incidents of that nature; it did not specify that the claimant's job was in eminent jeopardy if she had any other cash handling irregularities.

The only other warnings given to the claimant regarding cash handling issues was a warning on March 27, 2012 for charging $.49 too much for a transaction, and a warning on October 24, 2011 for a $34.00 shortage resulting from giving back too much change to a customer.

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). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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. 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. 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The gravity of the incident and the number of prior violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning for comparable conduct may detract from a finding of an intentional policy violation.

The reason cited by the employer for discharging the claimant is her presumed drawer shortage of over $100.00 on November 16 as well as the prior disciplinary warnings. The mere fact that an employee might have various incidents of unsatisfactory job performance does not establish the necessary element of intent; misconduct connotes volition. A failure in job performance is

not misconduct unless it is intentional. *Huntoon*, supra; *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). There is no evidence the claimant intentionally failed to prevent a drawer shortage; indeed, it is not completely clear that the discrepancy could not have been resolved if the claimant had been given an opportunity to review the employer's calculations. Further, in order to establish the necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of her job. *Cosper*, supra; *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). While the most recent warning was given to the claimant on November 16 itself, it cannot be determined whether the transaction that might have lead to the variance might not have already occurred by the time during the shift when the employer gave the claimant the warning for November 14, which was also not for the same conduct which the employer asserts occurred on November 16. Prior to the two concerns on November 14 and November 16, it had been over ten months since the claimant had been given a warning for a minor cash variance, and it had been five months before the only other warning for a variance.

The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's December 12, 2012 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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