

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

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**Appeal Number: 06A-UI-01081-ET
OC: 01-01-06 R: 04
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 20, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 6, 2006, and continued March 28, 2006. The claimant participated in the hearing with subpoenaed witness Captain Bruce Rieger and Sergeant Christy Siegwarth. Trisha Vollmer, Human Resources Representative; Patrick Cram, Branch Manager; and Paul Ybanez, Employer's Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three were admitted into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time sergeant for Securitas Security Services from November 17, 2000 to January 3, 2006. The employer provides security for an Archer-Daniels-Midland plant located on or near a port. As a result they are monitored by Homeland Security and Maritime Security through the Coast Guard and their sensitive security mandatory equipment maintenance checklist is subject to inspection by Homeland Security or the Coast Guard at any time. One of the claimant's responsibilities was to complete the 10 question equipment maintenance checklist every time she worked second shift. The checklist includes items such as checks on cameras and VCRs, door alarms, phone lines, paging systems and radio systems. On November 22, 23, December 5 and 7, 2005, the claimant indicated she checked the VCR in the lobby and it was recording. The first shift sergeant performs the same checks on the front of the checklist sheet as the claimant, working second shift, completes on the back of the checklist. When the employer compared the documents it discovered the first shift sergeants stated the VCR in the lobby was checked but was not working because it was "eating tapes." On those same dates the claimant indicated she checked the lobby VCR and it was working. When the VCR is working, a red power button and red record button are on and employees can see a reel of film rolling with a counter indicating the location of the recording. The VCR was taken out of service November 18, 2005, because it was not working. The employer's secretary/lieutenant was on another assignment for three weeks and consequently did not notice the discrepancies. She reported the situation to Patrick Cram, Branch Manager, who met with the claimant and asked if she had correctly checked everything she listed on the checklist and the claimant stated she checked and the red light was on. The employer terminated her employment January 3, 2006.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The claimant failed to check the lobby VCR on at least four occasions and it is not clear that she checked the items on the list each time she was assigned that duty rather than considering it a routine matter that did not require her to actually check them. While it may have seemed a routine task, it was an important duty, one that was monitored by Homeland Security and Maritime Security and one that could have resulted in fines to the client. Although the claimant maintains she did check and the red lights were on the VCR, it is not logical to believe that two other employees noticed that the VCR was "eating tapes" on the same days the claimant stated the VCR was working normally and after the VCR was taken out of service. The claimant's actions December 7, 2005, were not an isolated incident and her conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

Iowa Code section 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 January 20, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$3,403.00.

je/tjc