

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA K SMITH
Claimant

APPEAL NO. 08A-UI-01175-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PEAK INTERESTS LLC – PIZZA HUT
Employer

**OC: 01/06/08 R: 01
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Peak Interests, LLC filed an appeal from a representative's decision dated January 29, 2008, reference 01, which held that no disqualification would be imposed regarding Samantha Smith's separation from employment. After due notice was issued, a hearing was held by telephone on February 19, 2008. Ms. Smith participated personally. The employer participated by Glenn Johnson, Area Manager, and Michelle Boken, Manger. Exhibits One through Seven were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Smith was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Smith was employed by Peak Interests, doing business as Pizza Hut, from July 7, 2005 until December 14, 2007. At the time of separation, she was working approximately 25 hours each week as a cook, waitress, and delivery driver. She was discharged due to theft.

On December 11, 2007, family members of one of Ms. Smith's coworkers ate at the restaurant. At the conclusion of their meal, they gave Ms. Smith \$25.00 to pay their \$20.82 tab. She was told the change should be given to the waitress as a tip. Ms. Smith acknowledged that she received the \$25.00. At the close of business, it was noted that a transaction had not been closed in the register. A shift manager voided the ticket on the belief that it had been rung through twice. The next day, it was determined that the ticket had not been rung through twice and, therefore, should not have been voided. The result was that the register was short by \$20.82. It was determined that the transaction in question was for the family of Ms. Smith's coworker.

The employer asked the employee whose family ate at the restaurant to question the family as to the circumstances under which they paid. The family member confirmed that the money for their meal had been given to Ms. Smith. If the transaction had been properly rung through the computer, it would not have appeared as an open transaction at the close of business. The transaction has to be

completed in the register in order for a customer receipt to be generated. The employer has never had any occasions on which a transaction was properly rung up but continued to appear as an open transaction. As a result of her failure to account for the missing money, Ms. Smith was discharged on December 14 for theft of company property.

Ms. Smith filed a claim for job insurance benefits effective January 6, 2008. She has received a total of \$750.00 in benefits since filing her claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Smith was discharged for theft of money entrusted to her. She acknowledged that she received the \$25.00. She clearly did not put the money in the register as required and did not run the transaction through the register. If it had been run through the register, it would not have appeared as an open transaction at the end of the day. If for some reason the register failed to function properly to close the transaction, there should have been an overage in funds if the money had been put in the register. There was not an overage.

The employer did not present evidence that anyone saw Ms. Smith pocket money at work. However, she had control of the money and the money never made it into the register. The permissible inference is that the money was taken by Ms. Smith. For the reasons cited herein, the administrative law judge concludes that theft has been established by the evidence. Theft is clearly contrary to the standards an employer has the right to expect. Accordingly, benefits are denied.

Ms. Smith has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated January 29, 2008, reference 01, is hereby reversed. Ms. Smith was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Smith has been overpaid \$750.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw