

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROL J LYNN**  
Claimant

**APPEAL NO. 08A-UI-01380-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEATON INC  
BURGER KING**  
Employer

**OC: 01/06/08 R: 03  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Carol Lynn filed an appeal from a representative's decision dated February 5, 2008, reference 01, which denied benefits based upon her separation from Beaton Inc. After due notice was issued, a hearing was held by telephone on February 25, 2008. Ms. Lynn participated personally. Participating as witnesses for the claimant were Jim Hughes and Steven Hiepler. The employer participated by Kathy Frericks, Comptroller.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for intentional misconduct in connection with her work.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant last worked for this employer from November 2004 until January 8, 2008 when she was discharged for cash shortages. Ms. Lynn was employed as a part-time crew member and was paid by the hour.

The claimant was discharged on January 8, 2008 and was told at the time that her discharge was related to a cash shortage in her drawer for approximately four days earlier. The claimant had previously been warned in November 2007 and December 2006 for cash shortages. The employer believed that the claimant had the ability to perform her duties. The claimant did not count her cash drawer at the beginning of her shift to insure that the proper amount was present. At the conclusion of the work shift the employer removes the cash drawer and later determines whether the cash contained within is correct.

The claimant denies misappropriating, giving too much change or other action which would potentially cause the shortage. Ms. Lynn did not know that the cash drawer had been short until January 8, 2008 that she was being discharged from her employment.

## REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the employer made a management decision to terminate Ms. Lynn based upon a cash shortage that took place on approximately January 4, 2008. The claimant had been previously warned and the employer considered an approximate \$24.00 shortage to be substantial.

The evidence in the record establishes the claimant was employed in a high volume establishment fast food restaurant and was required to make change throughout her work shift. The claimant denies under oath misappropriating, giving too much change or otherwise acting intentionally in disregard to her employer's interest or standards of behavior. The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable. Although it is understandable that the employer might make a management decision to discharge Ms. Lynn for these reasons, the claimant's conduct has not been shown to have risen to the level of intentionally disqualifying misconduct or negligence or carelessness of such a degree so as to disqualify the claimant from receiving unemployment insurance benefits. While the decision to terminate Ms. Lynn may have been a sound decision from a management viewpoint the evidence does not establish intentional disqualifying 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.

For the reasons stated herein the administrative law judge concludes that the claimant was discharged under nondisqualifying conditions. The claimant is allowed unemployment insurance benefits provided that she meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated February 5, 2008, reference 01, is hereby reversed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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