

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA M DUARTE

Claimant

APPEAL NO. 09A-UI-03410-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA STUDENT LOAN LIQUIDITY CORP

Employer

**Original Claim: 01/25/09
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

Iowa Student Loan Liquidity Corporation (ISL) filed an appeal from a representative's decision dated February 20, 2009, reference 01, which held that no disqualification would be imposed regarding Angela Duarte's separation from employment. After due notice was issued, a hearing was held on April 14, 2009, in Des Moines, Iowa. Ms. Duarte appeared with counsel, William Thomas, Attorney at Law. The employer participated by Bob Krueger, Human Resources Director; Erin Lacey, Director of Fiscal Operations; Carey Bewyer, Human Resources Specialist; and Jim Allen, Facilities Specialist. Exhibits 1 through 13 were admitted on the employer's behalf. The employer was represented by Liz Kennedy, Attorney at Law.

ISSUE:

At issue in this matter is whether Ms. Duarte 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. Duarte began working for ISL on July 17, 2006. Her last day at work was January 30, 2009, at which point she was working full time as a mail clerk. She was discharged due to theft of money from the employer. She removed a bank bag containing cash from the mail room where it was left to be picked up by the courier.

The employer began experiencing monetary losses in August of 2008. The employer conducted a review to determine which individuals who handle cash were present on the days in which money was missing. Only Ms. Duarte and one other employee were present on all days in which money was missing. A surveillance camera was installed within the ceiling tiles of the mail room. The camera had a direct view of the table on which the bank bags are placed for the courier to pick up. Cash is placed in a bag separate from checks or other negotiable instruments.

Ms. Duarte was observed on the surveillance tape removing one of the bank bags left for the courier on January 29. It was determined that she had removed the bag containing \$545.00 in cash. As a result of her actions, she was discharged on January 30. Criminal charges were filed but had not

been resolved as of the date of the hearing herein. Ms. Duarte's theft was the sole reason for her discharge.

Ms. Duarte filed a claim for job insurance benefits effective January 25, 2009. She has received a total of \$2,930.00 in benefits since filing the 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. For reasons that follow, it is concluded that the employer has satisfied its burden of proof. In so concluding, the administrative law judge has only considered the conduct of January 29, 2009, as the employer provided no direct proof that Ms. Duarte was guilty of theft on prior occasions. It is clear from the video surveillance tape that she removed a bank bag on January 29. She did not testify in the hearing and, therefore, did not dispute that she was the individual on the tape or that it was a bank bag she removed.

Theft from one's employer is clearly contrary to the type of behavior an employer has the right to expect. Ms. Duarte's conduct in taking \$545.00 that did not belong to her constituted a substantial disregard of the employer's interests and standards. Accordingly, she is not entitled to job insurance benefits.

Ms. Duarte has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine whether Ms. Duarte will be required to repay benefits already received.

DECISION:

The representative's decision dated February 20, 2009, reference 01, is hereby reversed. Ms. Duarte was discharged for misconduct in connection with her employment. Benefits are withheld until 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. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Duarte will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw