

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: 04A-UI-01660-SWT
OC 01/11/04 R 02
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 9, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 8, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Patrick McGraw, Attorney at Law. Lon Neofotist participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked part time as a customer service representative from May 22, 2003 to January 10, 2004. Jackie Taylor, the store manager, was the claimant's direct supervisor. Lon Neofotist was the district supervisor. The claimant was informed and understood that under the

employer's work rules, employees who accumulate shortages of \$100.00 or more in a twelve-month period were subject to discharge.

On January 10, 2004, the claimant's cash drawer was \$100.00 short after she returned from taking a break. Taylor telephoned Neofotist and reported the shortage. She was on a speakerphone with the claimant present. When Neofotist heard about the shortage, he told Taylor, "she is out of there," meaning that she was discharged. Neofotist was unaware that the claimant was there until Taylor told Neofotist that the claimant knew the policy and was willing to accept the punishment. When Neofotist learned that the claimant was there, he asked Taylor to pick up the phone. After Neofotist hung up the phone, the claimant said, "He just fired me." Taylor did not disagree, but asked the claimant to give them until Monday to resolve things. The claimant understood after the conversation that she had been discharged. On January 13, Taylor found the missing \$100.00. When the claimant turned her in keys on January 14, Taylor asked the claimant if she wanted her job back. The claimant told Taylor that she had already filed for unemployment insurance benefits. Taylor responded that she hated to see the claimant go. The claimant turned in her keys because she still understood that she was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The preponderance of the evidence establishes that Neofotist discharged the claimant.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The evidence fails to establish any current act of work-connected misconduct committed by the claimant.

DECISION:

The unemployment insurance decision dated February 9, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/b