

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA J WATSON
Claimant

APPEAL NO. 08A-UI-04388-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GREAT PLAINS SPECIALTY FINANCE INC
CHECK 'N GO**
Employer

**OC: 04/13/08 R: 03
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Check 'N Go (employer) appealed a representative's May 1, 2008 decision (reference 01) that concluded Brenda Watson (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 21, 2008. The claimant participated personally. The employer participated by Jonason Sturdivant, Director of Operations.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 9, 2005, as a full-time customer service representative. The claimant received a copy of the employer's handbook. The handbook contains a policy that an employee will be terminated if there is a cash shortage or overage of \$101.00 or more within a twelve-month period. The employer issued the claimant a written warning on September 4, 2007 for having a \$100.00 cash drawer shortage. The employer notified the claimant that further infractions could result in termination from employment. The claimant thought that perhaps two one hundred dollar bills stuck together.

On April 3, 2008, the claimant had a \$40.00 cash draw shortage. She could not think of any reason for the shortage other than a miscount or bills sticking together. The employer terminated the claimant on April 7, 2008, in compliance with its policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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.

Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). Repeated unintentionally careless behavior of claimant towards subordinates and others, after repeated warnings, is misconduct. Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). An employer has a right to expect employees to carefully perform the functions of the job. The claimant disregarded the employer's right by making careless mistakes in handling the employer's assets. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's May 1, 2008 decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid

wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$949.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css