

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHASTITY WHITE**  
Claimant

**APPEAL NO: 09A-UI-13677-E**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF INDEPENDENCE**  
Employer

**OC: 08-23-09**  
**Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 11, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on February 1, 2010. The claimant participated in the hearing. Bob Beatty, Director of Parks and Recreation, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as permanent part-time secretary for the City of Independence from January 2000 to August 21, 2009. On August 20, 2009, the claimant was the only employee in the building when the register was "z'd out" which clears the cash register and then the register prints a tape of when that occurred. All of the checks were reentered but not the \$16.00 in cash for which the employer had the receipt number of 179260 dated August 20, 2009. The morning employee left at approximately 10:30 a.m. and the claimant started her shift at 10:10 a.m. The "z-out" was completed at 11:22 a.m. On August 21, 2009, Director of Parks and Recreation Bob Beatty met with the claimant about the missing money and after he asked her about "z-ing" out the register she could not explain why only the checks were reentered. Upon further questioning she admitted "z-ing" the register out and stealing the \$16.00 for gas and admitted it was all her fault and stated "things were very tight." Mr. Beatty terminated her employment for theft as the employer has zero tolerance for stealing. During the hearing the claimant denied taking the money, saying she used it for gas or that "things were very tight" but admitted she was the only employee present at the time the "z-out" occurred and agreed it was unlikely someone off the street would "z-out" the register and then enter all of the checks but not the cash. She stated Mr. Beatty "asked and harassed" her about the money until she admitted taking it. She did not ask for a witness to be present during the conversation when Mr. Beatty terminated her employment for theft.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant denied taking the \$16.00 during the hearing the employer credibly testified she admitted doing so to him when asked about it August 21, 2009, and his testimony that she said she needed the money for gas, that it was completely her fault and things were very tight right now seems too specific to have been fabricated by the employer. Additionally, the claimant was the only employee in the building at the time the incident occurred. The employer has a zero tolerance for theft and the claimant took the \$16.00 in cash the employer made August 20, 2009. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and

obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The September 11, 2009, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css