

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUDITH YINGLING**  
Claimant

**APPEAL NO. 11A-UI-14761-H2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOODWILL INDUSTRIES OF CENTRAL  
IOWA**  
Employer

**OC: 10-16-11**  
**Claimant: Respondent (2R)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 4, 2011, reference 01, decision that allowed benefits. After due notice was issued, an in-person hearing was held on January 9, 2012 at Des Moines, Iowa. The claimant did participate. The employer did participate through (representative) Kathy Crooks, Human Resources Director and Jill Olson, Executive Vice President. Employer's Exhibits A through M were entered and received into the record.

**ISSUES:**

Was the claimant discharged due to job connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a food skills trainer full time beginning May 28, 2002 through October 18, 2011 when she was discharged. As the food skill trainer the claimant ran the company cafeteria where clients were trained in how to work in a food service setting. In early 2011 the employer began noticing discrepancies in the inventory and in the sales reports from the cafeteria where the claimant was in charge. The claimant was the only person to run the cash register as the clients that were being trained had no access to the cash register. The claimant was discharged for failing to adequately and completely perform her job duties. The employer's evidence establishes that on October 17 the claimant ran transactions/sales through the cash register then attempted to conceal those transactions so that the employer would not know the sales had been made and would not know that money was missing for those sales. The employer's records clearly establish that the morning of October 17 sales transactions were run that were not accounted for in the paperwork the claimant later submitted. When questioned that day and the next, the claimant could offer no explanation for why the transactions were missing. The sales and all transactions are organized numerically so the transactions can be traced through the system. When the employer pulled the drawer to count

it, they discovered that a total of \$16.60 in sales had not been rung up and accounted for. When they returned the cash drawer to the register, the claimant had clipped together three-five dollar bills and placed them in the back of the cash register. The claimant could offer no explanation about the discrepancies. The employer concluded that the claimant was attempting to conceal sales so that she could pocket the money from those transactions. The claimant had demonstrated on many occasions that she knew how to and could correctly run the cash register and run all of the required reports. There were reports missing that would have shown the missing transactions. The employer later learned that in the past three years the claimant had taken over one-thousand dollars in gift cards from the food broker Farner-Bocken that should have been returned to the company.

The claimant has received unemployment benefits after the separation on a claim with an effective date of October 16, 2011.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew she was not

to take money or products from the employer. The employer's evidence is compelling and establishes that the claimant rang up numerous transactions on the morning of October 17 so that the sales would not show up on the computer. The claimant cannot account for the missing sales transactions. Her explanation and lack of explanation to the employer at the time she was questioned make her testimony not credible. The Administrative Law Judge is persuaded that the claimant did not follow the sales procedures so that she could steal from the employer. Stealing from the employer is sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. 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 § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits.

**DECISION:**

The November 4, 2011 (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.

**REMAND:** The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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