

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT R SCHAFER
Claimant

APPEAL NO: 14A-UI-03800-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 03/02/14
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 96.3-7 – Recovery of Overpayment
871 IAC 24.10 – Fact Finding Participation

STATEMENT OF THE CASE:

The employer appealed a department decision dated April 4, 2014, reference 01, that held the claimant was not discharged for misconduct on March 1, 2014, and benefits are allowed. A telephone hearing was held on April 29, 2014. The claimant did not participate. Jeff Haney, GM, participated for the employer. Employer Exhibits 1 - 6 were received as evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with employment.

Whether claimant is overpaid any unemployment benefit.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant was hired on November 10, 2010, and last worked for the employer as a full-time team leader on March 1, 2014. He received the employer cash handling policy.

The employer issued claimant a written warning on December 21, 2013 for violating the cash handling policy. The employer found two \$100.00 bills missing from separate bundles in the safe. The employer set out a six-point bullet list for claimant to follow in handling the cash. He was required to have two people do and verify the cash deposited in the safe and initial the bundle to show who made the count. If there was any discrepancy, he was to immediately contact the GM.

On February 28, 2014 claimant left his work shift early more than 40 minutes. The next work shift discovered the safe count was short \$1,000.00. When the GM confronted claimant on March 1, he had no explanation for the cash shortage and denied taking the money. He failed

to have another person do the count with him and initial the bundles. He did not contact the GM about any money discrepancy.

The GM discharged claimant on March 1 for a repeated violation of the cash handling policy. Claimant failed to respond to the hearing notice and there is no UI Appeals C2T record he called in and provided a phone number to be called for the hearing.

Claimant has received benefits totaling \$1,771.00 on his unemployment claim during a seven-week period ending April 26, 2014. He committed no act of fraud or misrepresentation to obtain these benefits. The employer submitted written documentation at department fact finding regarding the employment separation issue.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes employer has established claimant was discharged for misconduct in connection with employment on March 1, 2014 for violation of its cash handling policy.

While the employer was unable to establish claimant stole cash, it did show he had been warned for violating cash handling policy and committed a similar violation right before his discharge.

The employer listed a six-bullet point instructed for handling cash when it issued claimant the December written warning. Claimant knowingly violated that instruction on February 28 by failing to have another person do the count and initial the cash bundles. Since there was a \$1,000.00 cash shortage claimant should have notified the GM before leaving his work shift early. Job disqualifying misconduct is established.

Iowa Code section 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.

The administrative law judge further concludes claimant is overpaid \$1,771.00 benefits for the seven weeks ending April 26, 2014 due to the disqualification imposed in this decision. Although there is no evidence of claimant fraud or misrepresentation to obtain these benefits, whether claimant is required to repay the overpayment is remanded. There is evidence of employer fact-finding participation but whether it satisfies 871 IAC 24.10 is remanded.

DECISION:

The department decision dated April 4, 2014, reference 01, is reversed. The claimant was discharged for misconduct on March 1, 2014. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. Claimant is overpaid benefits \$1,771.00 but the issue whether the employer participated and claimant's obligation to repay it is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css