

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TANNER J HEINTZ**  
Claimant

**APPEAL NO: 13A-UI-13354-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**O'REILLY AUTOMOTIVE INC**  
Employer

**OC: 11/03/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated November 27, , reference 02, that held the claimant was not discharged for misconduct on November 6, 2013, and benefits are allowed. A telephone hearing was held on December 23, 2013. The claimant participated. Matt Pinegar, Store Manager, participated for the employer. Employer Exhibits 1 – 5 were received as evidence.

**ISSUE:**

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

**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 7, 2011, and last worked for the employer as a full-time parts specialist on November 6, 2013. He received the employer policy that includes cash handling procedure. At the end of each day, it is expected that a team member's cash drawer balance be within \$.50. Team members responsible for consistent or excessive shortages will be subject to progressive discipline up to and including termination.

The employer issued claimant a first and final warning for using profanity. The incident date is on or near July 8, and claimant signed for it on September 17, 2013.

Employer loss prevention questioned claimant about some missing property and it was located in the store. It later questioned claimant about a cash shortage where a customer left the store without paying. He felt responsible for it and reimbursed the store.

Claimant was questioned about a \$94 cash overage that happened back in October. The claimant could not recall why his drawer was that much over and the manager used several methods and could not identify it. The claimant was discharged on November 6 for violation of the cash handling policy in light of the final warning.

## 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct or any current act of misconduct in connection with employment on November 6, 2013. The employer must establish the most recent incident is misconduct.

The employer discharged claimant for cash handling policy violation that is totally unrelated to the reason for the final warning. The store manager was not present and he could not say what claimant profanity was involved.

The store manager was vague about what cash handling issue was involved in the discharge and he could not put a specific date to it other than he confronted claimant on October 21.

Claimant's states it occurred well before then. It appears loss prevention had an issue about missing company property and shifted gears when it was located.

The employer failed to show the cash handling error occurred on any recent date in proximity to the discharge and that claimant committed any act of misconduct.

**DECISION:**

The department decision dated November 27, 2013, reference 02, is affirmed. The claimant was not discharged for misconduct on November 6, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs