

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

PAULA J MICK  
428 S 5<sup>TH</sup> AVE W  
NEWTON IA 50208

COMPASS ONE LLC  
c/o TALX – UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-03278-SWT  
OC: 02/05/06 R: 02  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 9, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 10, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Billy Gilbreath participated in the hearing on behalf of the employer with a witness, Tameca Kurtz. Exhibit A, consisting of a statement from Brandi Williams that had been submitted to the Appeals Section prior to the hearing, was sent to the employer on April 13, 2006, for objection. Since no objection was received, Exhibit A is admitted into evidence.

#### FINDINGS OF FACT:

The claimant worked for the employer as a cashier in the cafeteria at the Maytag headquarters from October 21, 1997, to February 2, 2006. The claimant had received warning on September 17, 1999, and November 20, 2000, for using the cancel key on the register, which she was told never needed to be used. After receiving the warning, the claimant was required to ring up a receipt and have a customer sign it whenever a transaction had to be canceled. She was told that the warning would be removed from her record by the food service director, after she had shown instances when it was necessary to use the cancel key.

On February 2, 2006, a customer bought items from the cafeteria and left a \$20.00 bill on the counter to pay for the food. After the claimant gave the customer her change she left the cafeteria. When the claimant picked up the \$20.00, she noticed that two \$20.00 were stuck together. The claimant ran out into the hallway to try and catch the woman but she had left. She put the extra \$20.00 in the drawer of her register and intended to give it back if the woman returned.

On January 31, a customer had taken a taco salad for lunch to the register and discovered she did not have her wallet and did not have any money in her purse to pay for the salad. The ATM machine was out of service that day. The claimant prepared a receipt for the customer and told her to bring in the money the next day. The customer was off work the next day, but she came in before the start of her shift on February 2 and paid the claimant \$5.00 for her taco salad. The claimant put the money in the cash drawer. There had been times in the past under similar circumstances when customers had been allowed to pay for their food later, with the food service director's knowledge.

A short time later, before the claimant had a chance to ring the taco salad sale into the register, Billy Gilbreath, the food service manager, asked to do an audit of her cash drawer. The claimant believed Gilbreath was looking for a reason to fire her and believed that if he found her drawer was over by \$25.00, she would be discharged. She took the extra \$25.00 out of the drawer and held it in her hand as she went back to Gilbreath's office.

An employee had reported to Gilbreath the day before that she had observed the claimant going to break with money in her hand. Gilbreath noticed the claimant was clenching her hand and asked what she had in her hand. The claimant opened her hand and showed the \$20.00 and \$5.00 bills and explained about the woman leaving an extra \$20.00 on the counter. Gilbreath asked the claimant what she intended to do with the \$20.00 if the woman did not claim it; the claimant told him that she intended to keep the money. She said this because previously employees who had found money on the floor or in a trash can had been allowed to keep the money. Gilbreath accused the claimant of stealing the money and told the claimant she needed to write up a statement admitting that she was going to keep the money.

After the claimant prepared and signed a statement that said she intended to keep the \$20.00, Gilbreath asked for her keys and informed her that she was discharged. The employer discharged the claimant for mishandling company funds.

The claimant filed for and received a total of \$1,452.00 in unemployment insurance benefits for the weeks between February 5 and March 18, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

First of all, the claimant's testimony about the source of the \$5.00 is credible and supported by the testimony of the customer in question. The problem is that since the claimant did not ring up the transaction, there is no way to know whether she ever would have rung it up. In any event, by taking the \$5.00 out of the drawer she was concealing the fact that she had taken money from a customer without ringing the sale up on the cash register.

The claimant's action in taking the \$20.00 bill left on the counter, placing it in the cash register, and then removing it from the cash register and concealing it so that it would not be counted also was an act of dishonesty. I do not question that the claimant would have returned the money if the customer had come in that day. Furthermore, the claimant's assertion that other employees have kept money found on the floor or in a trash container was supported by the testimony of Tameca Kurtz, employer's witness, who said she had kept money found in the trash. This does not establish, however, the employer had a policy that allowed employees to keep any money found in the cafeteria. In addition, there is a difference between keeping money found on the floor or in the trash and keeping \$20.00 left on the counter by a customer. All the claimant needed to do to prevent the drawer being over was either to inform her supervisor about the extra \$20.00 when he asked to audit the drawer or to simply clip a note to the bill explaining what had happened and place it in the register. By the claimant's actions, she was making sure that she got the money if it was unclaimed. The employer had the right to expect more integrity in handing funds from a cashier. Willful and substantial misconduct had been proven.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,452.00 in benefits for the weeks between February 5 and March 18, 2006.

**DECISION:**

The unemployment insurance decision dated March 9, 2006, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$1,452.00 in unemployment insurance benefits, which must be repaid.

saw/pjs