

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNETH R YOHE JR**  
Claimant

**APPEAL NO: 09A-UI-15937-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENESIS DEVELOPMENT**  
Employer

**OC: 09/13/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Kenneth R. Yohe, Jr. (claimant) appealed a representative's October 19, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Genesis Development (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 30, 2009. The claimant participated in the hearing. Jennifer Ellis appeared on the employer's behalf. One other witness, Kathy Lonergan, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 1, 2008. He worked full time as a team leader in the employer's residential group home for persons with mental disabilities. His last day of work was August 21, 2009. The employer suspended him on that date and discharged him on September 24, 2009. The reason asserted for the discharge was alleged financial exploitation of a dependent adult.

The employer was concerned about \$40.00 that could not be precisely accounted for by the claimant for a particular resident. On July 21 the claimant took \$20.00 out of the resident's "money left on file" envelope. He indicated he had given it to the resident as spending money planned for a trip by the resident to an amusement park on August 14. The resident did go to the amusement park and had additional monies as well, although the employer could not establish how much or from what source. The resident came back with a number of souvenirs he had purchased as well as paying for his admission and food and drinks. There were no receipts to show how much was spent on what, but the claimant had not accompanied the

resident on the outing and was unable to verify whether the \$20.00 had been part of what the resident spent at the amusement park.

The resident would typically carry several dollars with him to be used on sodas and snacks at his work. It was typical for the claimant to take the resident to the bank to get change for him to carry for these sodas and snacks. At the end of the day on August 20 the claimant removed \$20.00 from the "money left on file" envelope for the resident, with the intention that on August 21 he would make a trip to the claimant to the bank to get change. He did not have a chance to carry this out on August 21 as he was suspended before he could go to the bank with the resident. The employer could not determine where the \$20.00 was; the claimant believed it was in one of the resident's drawers but did not have an opportunity to try to find the money before he was suspended. Because of the employer's concern that the claimant could not account for the money and could have misappropriated the money, he was discharged.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the conclusion he likely misappropriated the money that could not be accounted for. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact misappropriated the money. Under the circumstances of this case, the claimant's inability to fully account for the monies was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an

isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's October 19, 2009 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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