

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

WENDY J WHITAKER  
PO BOX 355  
BURLINGTON IA 52601

CHECK INTO CASH OF IOWA INC  
CHECK INTO CASH  
C/O THOMAS AND THORNGREN INC  
PO BOX 280100  
NASHVILLE TN 37228

Appeal Number: 05A-UI-12268-HT  
OC: 11/06/05 R: 04  
Claimant: Respondent (1)

**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

STATEMENT OF THE CASE:

The employer, Check Into Cash, filed an appeal from a decision dated November 30, 2005, reference 01. The decision allowed benefits to the claimant, Wendy Whitaker. After due notice was issued, a hearing was held by telephone conference call on December 21, 2005. The claimant participated on her own behalf. The employer participated by District Manager Judith Mixer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Wendy Whitaker was employed by Check Into Cash from July 28 until November 9, 2005. She was a full-time customer service representative.

The claimant had her own cash drawer, and it was short on cash on two occasions during her employment. District Manager Judith Mixer talked to her at those times and told her she needed to be more careful in the handling of her money. Ms. Whitaker had complained to the store manager, but not the district manager, that other customer service representatives would access her drawer.

On November 5, 2005, Ms. Whitaker's drawer was short \$69.00. Company policies requires a written warning for shortages over \$50.00, and/or discharge. The decision was made to discharge the claimant because of the prior shortages.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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 claimant was discharged for shortages in her drawer, but the employer has failed to establish that the shortages were the claimant's responsibility and not the result of other people

using her drawer. She had not received any formal disciplinary action regarding her shortages, only a caution to be more careful. At no time was she told her job was in jeopardy if she had any more shortages.

The administrative law judge cannot conclude that the employer has met its burden of proof to establish the claimant's shortages were due to intentional failure to perform her job duties as required, or negligence to such a degree of reoccurrence as to constitute misconduct. Disqualification may not be imposed.

**DECISION:**

The representative's decision of November 30, 2005, reference 01, is affirmed. Wendy Whitaker is qualified for benefits provided she is otherwise eligible.

bgh/kjw