

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES A DORSEY**  
Claimant

**APPEAL NO. 10A-UI-05719-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PARCO LTD**  
Employer

**Original Claim: 01/03/10  
Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated April 5, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 2, 2010. The claimant participated. The employer participated by Joy Brandt, general manager, and Pam Pray, human resources manager. The record consists of the testimony of Joy Brandt; the testimony of James Dorsey; and the testimony of Pam Pray.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer has a franchise to operate Wendy's restaurants in Dubuque, Iowa. The claimant was hired on March 14, 2005. On the date of his termination, January 6, 2010, he was a co-manager of the restaurant on East 16th Street in Dubuque. The claimant was terminated for multiple violations of the employer's written policies on cash management.

One of the responsibilities of the co-manager was to deposit restaurant receipts. Each manager had a separate cash bag that could only be used by that manager. A manager was required by written policy to deposit restaurant receipts on the date of receipt. For example, if a manager was on duty on a certain day and had cash to deposit, the deposit was to be made the same day. Another cash policy forbade an employee from cashing a paycheck through the deposit. The claimant was aware of these policies.

On December 4, 2009, the claimant cashed his payroll check through the cash deposit from the restaurant. He made out two deposit slips in order to prevent this from being discovered. The deposit that day was approximately \$63.00 short. The claimant was given a written reprimand by his employer for violating the cash policy.

The claimant was required to make a deposit after his shift on December 22, 2009. He did not make that deposit until December 28, 2009. On December 30, 2009, the claimant was observed on surveillance tape from the restaurant placing an envelope in his pocket, which represented the cash receipts for that day. The deposit from that date was made late on December 31, 2009. The claimant was also required to make a deposit from receipts on January 1, 2010. That deposit was not at the bank nor was it in the restaurant's safe. Surveillance tape showed someone tampering with the office camera on January 2, 2010. Another crew member reported that the claimant was in the office at the time the camera stopped working. It was not turned on again until the claimant left that night. On January 4, 2010, Ms. Bryant took the claimant's cash bag to the bank and had bank personnel open it. It contained cash receipts for January 1, 2010, and January 4, 2010.

The claimant was placed on suspension on January 5, 2010, while an investigation was conducted by the employer. He was terminated on January 6, 2010.

### **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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed by a worker to the employer is honesty. An employer can reasonably expect that an employee will not

misappropriate its property. An employer can also reasonably expect that individuals entrusted with handling its cash will follow policies established for the proper handling of that cash. The employer has the burden of proof to show misconduct.

After carefully weighing all of the evidence in this case, the administrative law judge concludes that the employer has established misconduct. The employer operates a restaurant and takes in cash from customers for the food and service provided. The claimant was a manager and knew that the employer had policies on how cash was to be handled. The claimant had a cash bag and was required to make daily deposits of cash in the bank. The evidence established that the claimant deliberately violated that policy on at least three occasions.

The claimant had no credible explanation for these violations. He testified that he did not know that he was not supposed to cash his paycheck through the deposit. Ms. Pray testified, however, that the claimant attempted to cover up what he did by making out two different deposit slips. The claimant was given a written warning on December 4, 2009, and should have had no doubt that the employer took its cash policy very seriously. The claimant then failed to make three deposits during the final week of December 2009 and the first week of January 2010. He stated that he did not make the deposit on December 30, 2009, because he was busy and the only manager on duty. Ms. Brandt testified that another manager was on duty and that time records proved that. Although the claimant denied tampering with the office camera on January 2, 2010, the greater weight of the evidence is that he did so, given the time frame and what was observed by another employee. The claimant could not explain why the January 1, 2010, deposit was not in the safe on January 2, 2010, and was not in the bank, and then showed up on January 4, 2010.

The greater weight of the credible evidence in this case is that the claimant deliberately violated the employer's policies on the proper handling of cash receipts. Misconduct has been established. Benefits are denied.

**DECISION:**

The representative's decision dated April 5, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

Vls/kjw