

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT D PARKER
Claimant

APPEAL NO. 11A-UI-10858-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 07/17/11
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 9, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 13, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Wade Wright participated in the hearing on behalf of the employer.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full-time for the employer as an overnight clerk from October 26, 2010, to July 19, 2011. He was informed and understood that under the employer's work rules, employees were required to act honestly and with integrity and were to notify management about any found items.

On July 16, a customer found a wallet in the restroom and turned it into the claimant. The claimant looked through the wallet before putting the wallet in the back of the drawer near the cash register. The claimant willfully violated the employer's work rule by not notifying management about the wallet.

After the owner of the wallet contacted the store inquiring about a wallet, the store manager and assistant store manager questioned the claimant. The claimant falsely denied any knowledge about the wallet or its whereabouts.

The store manager reviewed surveillance video that showed the wallet being turned in, the claimant looking into a wallet, and him placing the wallet in the back of the drawer. The

manager found the wallet where the claimant had left it. There was \$80.00 missing from the wallet according to the customer.

The store manager confronted the claimant with what he had observed on the video, and the claimant had no explanation.

The employer discharged the claimant for dishonesty and failing to notify management about the wallet on July 19, 2011.

The claimant filed for and received a total of \$2,020.00 in unemployment insurance benefits for the weeks between July 17 and September 17, 2011.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I don't believe the claimant simply forgot about the wallet because he got busy.

The claimant's dishonesty and violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated August 9, 2011, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw