

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY J WOLVERTON
Claimant

APPEAL NO. 09A-UI-16847-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC
Employer

**OC: 10/11/09
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mary Wolverton filed an appeal from a representative's decision dated October 29, 2009, reference 01, which denied benefits based on her separation from Flying J, Inc. After due notice was issued, a hearing was held by telephone on December 15, 2009. Ms. Wolverton participated personally. The employer participated by Jeff Haessly, General Manager.

ISSUE:

At issue in this matter is whether Ms. Wolverton was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Wolverton was employed by Flying J, Inc. from February until October 13, 2009 as a cashier. She worked approximately 32 hours each week. She was discharged as a result of cash shortages in her register. She was to verify her drawer count with another person at the start of her shift. If there were any variances at the end of the shift, she was to notify management. Each cashier was assigned his or her own register.

On September 18, Ms. Wolverton was short by \$20.00 and, as a result, received a written warning. On September 19, she was short by \$6.00 and received another written warning. The final incident that triggered the discharge occurred on October 11 when she was short by \$25.00. Pursuant to the employer's policy, three variances during a period of 90 days are grounds for termination. Ms. Wolverton was discharged on October 13, 2009 solely because of variances in her register.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Wolverton was discharged as a result of three cash variances

in the register assigned to her. The administrative law judge does not believe she deliberately or intentionally caused the variances or that she took any money that did not belong to her. However, the conduct did represent negligence, either in giving back too much change or not taking enough money as payment.

Negligence may constitute disqualifying misconduct if it is so recurrent that it represents a substantial disregard for the employer's interests or standards. See 871 IAC 24.32(1). Ms. Wolverton had three shortages over a period of less than one month. She was clearly on notice that she could lose her job if the variances continued. In spite of the warnings, she failed to use due care in handling the employer's funds. The administrative law judge concludes that three incidents of negligence in one month are sufficient to establish disqualifying misconduct. Therefore, benefits are denied.

DECISION:

The representative's decision dated October 29, 2009, reference 01, is hereby affirmed. Ms. Wolverton was discharged for misconduct in connection with her employment with Flying J, Inc. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs