

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI K VANDERHOFF
Claimant

APPEAL NO. 10A-UI-16633-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPARKY'S ONE STOP
Employer

OC: 11/07/10
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 2, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge. The claimant participated in the hearing. Deb Ludwig, a supervisor, and Cindy Tiefenthaler appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 1996. She worked as a full-time manager. As the result of an audit of the employer's books in early November 2010, the employer concluded the claimant took \$200 from the employer by taking cash from a register after depositing a check from Multi Service for charges inputted into the employer's computer in May 2010.

On August 13, Multi Service issued a check to the employer for \$200. (Employer Exhibit One.) The employer concluded the claimant deposited the \$200 check with the store's deposit, but also took \$200 in cash, because the registers were not long or short when she made this deposit on August 26. When the employer checked with Multi Service, it was verified the \$200 check had been deposited and the claimant's name appeared as the person who endorsed the check. (Employer Exhibit One.)

On November 9, 2010, the employer informed the claimant she was discharged for theft of the employer's money. The employer did not give her any specific details at that time.

The claimant established a claim for benefits during the week of November 7, 2010. She has filed and received benefits since November 7, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Although the claimant denied that she deposited the Multi Service \$200 check, Employer Exhibit One shows the check in question was deposited and the claimant's name appears as the endorsee. A preponderance of the evidence indicates the claimant deposited the \$200 check into the employer's account, but also took \$200 from the employer, because her register was not \$200 long the day she deposited the check. The employer's testimony must be deemed more credible than the claimant's. As a result of finding the employer's testimony credible, the employer established the claimant was discharged for reasons constituting work-connected misconduct. Taking money that did not belong to her amounts to an intentional and substantial disregard of the employer's interests. As of November 7, 2010, the claimant is not qualified to receive benefits.

Since the claimant has received benefits since November 7, 2010, the issue of overpayment or whether she is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's December 2, 2010 determination (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 7, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw