

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN L WHALEN**  
Claimant

**APPEAL NO. 12A-UI-04482-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAZOLI'S RESTAURANTS LLC**  
Employer

**OC: 03/25/12**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Fazoli's, filed an appeal from a decision dated April 16, 2012, reference 01. The decision allowed benefits to the claimant, Susan Whalen. After due notice was issued, a hearing was held by telephone conference call on May 14, 2012. The claimant participated on her own behalf. The employer participated by Regional Supervisor Pat Tallon.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Susan Whalen was employed by Fazoli's from January 9, 2008 until March 2, 2012 as a full-time general manager. As the general manager it is her responsibility to do a weekly inventory on Wednesday night of all supplies on hand then submit that report electronically to the corporate office. Once or twice a year a regional supervisor or regional manager would do a "surprise" audit Thursday morning at a store to determine if the inventory was correct.

One or two other general managers had suspicions Ms. Whalen was "padding" her inventory, that is, reporting more supplies on hand than were actually in the store. On Thursday, March 1, 2012, Regional Supervisor Pat Tallon and another general manager, Jennifer, did a surprise audit at Ms. Whalen's store. They found a variance of more than two percent short, that is, there were fewer items on hand than were reported in the electronic report. When questioned Ms. Whalen said she must have entered the wrong amount into the computer.

At the hearing the claimant stated she had dyslexia and found it hard to input numbers. At no time had she notified her regional manager or supervisor and ask them for help in dealing with the problem so that her reports would be accurate. The employer did not find out about this problem until the appeal hearing. Not having this information the employer discharged the claimant for "padding" the inventory,

Susan Whalen has received unemployment benefits since filing a claim with an effective date of March 25, 2012.

**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.

The claimant was aware of her problems with transposing numbers and, as a result, entering incorrect information into the computer system, and then submitting it to the corporate office. It is not her fault she suffers from this condition. But it is her responsibility to notify the employer of the problem and make sure she received the necessary help to assure complete and accurate inventory accounts. The employer has the right to expect an employee, who has a known problem, to notify a supervisor of the situation and seek the necessary help to accomplish her tasks.

Ms. Whalen's failure to properly notify the employer and seek assistance resulted in inaccurate inventory counts for her store. This was a problem she could have readily cured by asking for help and it was her failure to take this action which resulted in her separation for "padding" inventory. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of April 16, 2012, reference 01, is reversed. Susan Whalen is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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