

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CATHY ROWE
428 N WAPELLO
OTTUMWA IA 52501

CHECK INTO CASH OF IOWA INC
c/o THOMAS AND THORNGREN
PO BOX 280100
NASHVILLE IA 37228

Appeal Number: 06A-UI-00762-BT
OC: 12/18/05 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Check Into Cash of Iowa, Inc. (employer) appealed an unemployment insurance decision dated January 10, 2006, reference 01, which held that Cathy Rowe (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 7, 2006. The claimant participated in the hearing. The employer participated through Judith Mixer, District Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time assistant manager from January 27, 2005 through December 12, 2005. On December 9, 2005, the claimant opened an e-mail that was for the store manager from the district manager. The district manager wrote about an employee and the claimant assumed it was about herself even though she was never named. The claimant responded to the district manager and then deleted the email. The claimant contends the district manager told her to delete the email, but the district manager denied that contention. Furthermore, only the store manager and a district manager are allowed to delete company emails. The employer was not happy with this, but no further action was going to be taken at the time.

As the result of discovering items in the claimant's desk, the employer prepared two corrective action notices to be given to the claimant on December 12, 2005. The first was for previous incidents of mishandling cash funds which resulted from her preparation of contracts from which she had given people more money than they were supposed to receive. The second warning was the result of the claimant's possession of company documents for which she had no business reason to have them. The employer's policies prohibit the copying of any customer documents for any reason, and all customer documents are to be contained within that customer's file. The employer found, in the claimant's desk with her personal belongings, a copy of the deleted email and a copy of a customer's contract with the check. When the claimant was questioned as to why she had made the copies and had them with her personal items, she stated it was for her therapy. She acknowledged to the employer she knew she was not supposed to have the documents.

When the claimant was presented with the corrective action warnings, she refused to sign them and stated she did not have to sign them. The claimant became angry that she was being issued disciplinary warnings. The employer indicated the claimant "got a bad attitude" and "got real hateful." The decision was made to terminate the claimant instead of issuing written warnings, even though she did eventually sign the warnings.

The claimant filed a claim for unemployment insurance benefits effective December 18, 2005, and has received benefits after the separation from employment in the amount of \$1,848.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for violating company policy by knowingly possessing the employer's business documents and a copy of the email she deleted. The employer was fine with giving the claimant written warnings but when she became angry and refused to accept responsibility, she was fired instead. The reason the claimant had the company documents is still unknown. She told the employer it was for her therapy. At the hearing, the claimant testified she had the documents so she could remind herself that other people make mistakes, since it was apparently a contract that her store manager had made that contained a mistake. She went on to say she kept it so that she would remember it because it made her feel better but then stated she kept it because it frustrated her. She later stated she kept it in case she ever needed to prove it. Regardless of why she had it, she knew or should have known it was against company policy and there was no business reason for which she needed the documents. The claimant had developed a pattern of acting in her personal interests without considering the employer's interests. Her violation of a known work rule was a willful and material breach of the claimant's 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 and benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated January 10, 2006, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because, she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,848.00.

sdb/kjw