

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JARED MARSH**  
Claimant

**APPEAL NO: 06A-UI-08443-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**B R STORES INC**  
Employer

**OC: 07/30/06 R: 01  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

B R Stores, Inc. (employer) appealed an unemployment insurance decision dated August 18, 2006, reference 01, which held that Jared Marsh (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was on September 7, 2006. The claimant participated in the hearing. The employer participated through Donna Bristol, Patty Kuehn, and Amy Kirkman. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for disqualifying misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time store supervisor from November 9, 2005 through July 11, 2006 when he was discharged for violation of company policy. There had been a disparity between the amount of soda deposit refunds and the cans being turned in so the store auditor was watching the refunds. If there were 50 or more cans, the auditor turned the information over to the store director. On July 10, 2006, the claimant issued a refund for 516 bottles but there were only 360 bottles turned in by the customer. The store director reviewed the surveillance tape of that transaction and saw that the claimant gave the customer a refund but then issued another refund after the customer had left. The daily journal detail report was reviewed and showed the claimant issued a refund to the customer in the amount of \$15.90 for 318 cans. The customer left and the claimant conducted another transaction with a refund of \$9.90 for 198 bottles.

When questioned, the claimant explained that he gave the additional refund to the customer but could not explain where the missing bottles were. The employer contacted the police who also

viewed the surveillance tape and confirmed the claimant completed one refund that was given to a customer and then completed a second refund transaction without a customer. The surveillance video clearly shows there were only 15 flats while the claimant gave a refund of 21.5 flats. At the end of his shift, his cash drawer was short \$19.18. The claimant was discharged and when he refused to sign a no trespass notice, Police Officer Trummel from the Council Bluffs Police Department signed it for him with a criminal case number.

The claimant filed a claim for unemployment insurance benefits effective July 30, 2006 and has received benefits after the separation from employment.

### **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 theft which is a violation of company policy. His actions were recorded on a surveillance tape which was also viewed by a Council Bluffs police officer, who confirmed the claimant conducted a bottle refund transaction without a customer. The claimant's 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 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 August 18, 2006, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$780.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs