

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA K MULLIN
Claimant

APPEAL NO. 10A-UI-02191-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 01/10/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(1) – Definition of Misconduct
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed from a department representative's decision dated February 5, 2010, reference 01, that held the claimant was not discharged for misconduct on January 15, 2010, and benefits are allowed. A telephone hearing was held on March 30, 2010. The claimant participated. Amy Miell, Store Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUES:

Whether the claimant was discharged for misconduct.

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant began work on November 26, 2007. The claimant worked the last year and a half as a full-time assistant manager on January 15, 2010. The claimant was aware of the employer policies regarding manager responsibilities/cash handling. One of the claimant job duties was to prepare the cash bank deposit, and present it to a local bank.

While store manager Miell was on vacation, the claimant prepared cash deposits for December 23/24 after viewing the employer recorded business record/receipts. The claimant's deposit for December 23 recorded \$4,862.67, and \$2,933.75 for December 24. The bank recorded receiving cash deposits for those date the amounts of \$3,862.67 and \$3,433.75. The claimant noted the cash variance and placed a note on her report that was reviewed by manager Miell when she returned to work on January 3. Miell and three area supervisors reviewed this matter and concluded that claimant was responsible for a \$500.00 cash shortage.

The claimant had failed to follow manager policy by notifying a supervisor when she discovered the cash variance. Claimant was the only person whom prepared the deposit and presented them to the bank, and she could offer no other explanation than she made some err. The claimant was discharged for violation of employer policy that resulted in the cash shortage.

The claimant has received benefits on this claim.

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 administrative law judge concludes that the employer has established misconduct in the discharge of the claimant on January 15, 2010, for violation of company policy.

The failure of the claimant to notify an employer supervisor at the time of the cash shortage issue is a serious policy violation as it precluded a timely investigation by the employer as to when it occurred. The amount of the cash shortage supports a conclusion that this matter was something other than a counting err, and the amount of the shortage establishes this to be a serious err. The claimant's prepared deposit on December 23 was a \$1,000.00 short of the actual cash deposited, and \$500.00 less than what the bank received on the December 24. The claimant knowingly prepared a false deposit on December 24 in an attempt to reconcile the December 23 deposit that is an intentional act and it constitutes job disqualifying misconduct.

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.

Since the claimant has received benefits on this claim, the overpayment issue is remanded to Claims for determination.

DECISION:

The decision of the representative dated February 5, 2010, reference 01, is reversed. The claimant was discharged for misconduct in connection with employment on January 15, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured

work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css