

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

STARLA J STRUCK
1306 E CIRCLE RD
DENISON IA 51442

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

Appeal Number: 06A-UI-02177-DWT
OC: 01/29/06 R: 01
Claimant: Appellant (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

STATEMENT OF THE CASE:

Starla J. Struck (claimant) appealed a representative's February 17, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Check into Cash of Iowa, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 13, 2006. The claimant participated in the hearing. Bill Rankin, the district manager, appeared on the employer's behalf. 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on February 7, 2005. The claimant worked as a full-time assistant manager in Denison. The employer was short-staffed in December. Managers from various locations worked at other locations. The employer asked the claimant to work at the Carroll location on December 30 when the Carroll manager worked at another location.

The claimant's husband had recently been released from the hospital. He was not allowed to drive long distances by himself and he had several doctors' appointments in Carroll on December 30. The claimant was scheduled to work at the Carroll office on December 30. In order to work at the Carroll office and keep an eye on her husband who had doctors' appointments that day, the claimant had her husband come to work with her. The claimant had her husband stay in the manager's office so he did not have any interaction with any customers. When she had to leave the office to run an errand, the claimant locked up the office but left her husband in the manager's office.

The claimant knew the employer did not allow people who were not employees to be behind the counter. The claimant also knew her husband would not do anything in the manager's office. During the first week of January, the Carroll manager asked the claimant about her husband being in his office when she worked for him on December 30. The claimant explained why her husband was at work with her. The employer did said nothing more to the claimant about this incident until February 2.

The Carroll manager told Rankin about the claimant's husband being in his office in mid-January, 2006. Since the claimant had been an exemplary employee, Rankin wanted to talk to his supervisors about this situation. Rankin waited to talk to his supervisors until he personally saw them.

The claimant's supervisor, the Denison manager, was off work late January, 2006. On February 2, 2006, the employer discharged the claimant. The employer concluded the claimant failed to safeguard the employer's money and failed to follow the employer's procedure by allowing her husband to sit in the manager's office on December 30, 2006. When an employee fails to safeguard the employer's money, the employer's policy indicates an employee will be discharged. The employer did not have any money missing.

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. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The claimant acknowledged she should have talked to the Carroll manager about having her husband come to work with her on December 30, 2005. The claimant, however, knew she could not take the day off from work because the employer was short staffed. Under the facts of this case, the claimant did not know what else to do. The claimant used poor judgment when she did not ask a supervisor if her husband could come to work with her on December 30, 2005. The claimant did not, however, intentionally disregard the employer's interests. She made sure her husband had no interaction with the employer's customers and knew he would do nothing with any money that may have been in the manager's office. The claimant did not commit work-connected misconduct.

Even if the December 30, 2005 incident is deemed to be work-connected misconduct, the employer or the Carroll manager knew the claimant had her husband at work on December 30 almost immediately. The employer did not discharge the claimant for another month. The employer's assertion that he had to talk to his supervisors in-person is without merit. So in the alternative, if the claimant committed work-connected misconduct, the employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. Under either scenario, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 17, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. Even if the claimant committed work-connected misconduct, the employer discharged her for reasons that do not amount to a current act of work-connected misconduct. As of January 29, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc