

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

RICKERA A BROOKS
Claimant

APPEAL NO: 19A-UI-04609-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALDI INC
Employer

OC: 05/05/19
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 28, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 2, 2019. The claimant did not respond to the hearing notice and did not participate in the hearing. Lindsay Randklev, District Manager and Tom Kuiper, Employer's Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time associate for Aldi from September 26, 2018 to April 19, 2019. She was discharged for failing to follow the employer's return policy.

On April 12, 2019, the employer conducted its two week cash audit where it looks at returns, voids and cart suspensions. Lists of the employees' returns, voids and cart suspensions are provided and the employer looks for repetition or high dollar amounts. On April 12, 2019, the employer noticed the repetition on the claimant's returns. On March 29, 2019, at 2:48 p.m. the claimant performed a return for \$5.34; on March 29, 2019, at 3:10 p.m. she performed another return for \$5.34; on March 29, 2019, at 4:05 p.m. she performed a return for \$4.89; and on March 29, 2019, at 5:18 p.m. she performed another return for \$4.89. The associate must have a return receipt containing a valid phone number of the customer and the customer is required to sign the receipt with the associate and manager on duty. In looking at the receipts, the employer found the first two returns on March 29, 2019, were for the same item, an activity tracking watch, and the last two returns on March 29, 2019, were for the same item, dates from the produce section of the store. The employer then proceeded to watch the video of the claimant's shift March 29, 2019, and learned a male customer returned the activity tracker watch and received a cash refund at 2:48 p.m. The employer observed the claimant pick up the

watch, run it through the register and take the cash and put it in the drawer next to the register at 3:10 p.m. When there were no customers in her lane she opened the drawer and took something out and left her line going toward the break room and office. The office has a video camera and the claimant did not go into the office leaving the employer to surmise she went to the breakroom where there is no video camera. She returned 60 to 90 seconds later. For the March 29, 2019, 4:05 p.m. and 5:18 p.m. returns there were no customers at the register requesting returns. The claimant had a sheet of paper at the register containing the produce codes. After looking at the sheet of paper she opened the register and removed cash.

The claimant was gone a few days the following week and Director of Operations Steve Gray was not available until April 19, 2019. After reviewing the results of the investigation, the employer met with the claimant and asked if she understood the activity sheet and return policy. The claimant indicated she did and the employer asked her to explain the return policy and the claimant correctly did so. The employer then terminated the claimant's employment for violating the return policy March 29, 2019.

The claimant has claimed and received unemployment insurance benefits in the amount of \$1,400.00 for the eight weeks ending June 29, 2019.

The employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant violated the employer's return policy three times March 29, 2019. She performed returns when there was no customer presenting for a return and she removed cash from the register and indicated it was for a return on three separate occasions March 29, 2019, when only one item, the activity tracking watch, of the four transactions was actually returned. No customer appeared at the register returning dates, let alone did so twice as the claimant's paperwork indicated.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused

absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) “A continuous pattern of nonparticipation in the initial determination to award benefits,” pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer’s representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) “Fraud or willful misrepresentation by the individual,” as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer’s account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The employer did not participate in the fact-finding interview. Consequently, the claimant's overpayment of benefits is waived and her overpayment in the amount of \$1,400.00 for the eight weeks ending June 29, 2019, shall be charged to the employer's account.

DECISION:

The May 28, 2019, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 has received benefits but was not eligible for those benefits. The employer did not participate in the fact-finding interview within the meaning of the law. Therefore, the claimant's overpayment of benefits is waived and her overpayment in the amount of \$1,400.00 for the eight weeks ending June 29, 2019, shall be charged to the employer's account.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn