

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER R BRYANT
Claimant

APPEAL NO. 09A-UI-06608-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

OC: 03/29/09
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 23, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on May 26, 2009. Claimant participated with James Nerison. Employer participated through Mary Ann Major. Employer's Exhibit 1 was received.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as an assistant manager and was separated on April 1, 2009. Her last day of work was March 30, 2009. She was discharged due to a final cash shortage of \$59.32 on March 30. She had other cash shortages on February 23 (warning on March 13) and March 4 (warning on March 13). She had no other cash shortage issues during the employment. Although each register is assigned to only one person per shift, other people do have easy access to registers because of the simple access codes used and claimant's register was associated with the safe and every employee was able to access the safe. Each register does not get an individual register sheet at the beginning and end of the shift and registers are not always counted before the next shift. The claimant did not know why the shortages occurred so asked employer to conduct an investigation by reviewing surveillance tapes, providing overage and shortage forms, and performing an accounting again. None of this was done even though money seemingly lost on one day may show up a few days later because of delayed accounting errors, or a delay in payment by a local church for donations towards purchase of gas for financially constrained customers. She did not discount that she may have miscounted money back to customers as she had been weaning from anti-depressant and fibromyalgia medications resulting in withdrawal symptoms and was feeling disconnected at times. There had been times in the past that someone had stolen money from her drawer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs

potential liability for unemployment insurance benefits related to that separation. Since claimant had no cash drawer shortages that could not be determined as a simple accounting delay or error, other employees had easy access to the register and safe, these errors occurred within a short period of time, although the warnings were held for up to three weeks, and employer declined to investigate further in an attempt to pinpoint the reason for the shortage, it has not met the burden of proof to establish the shortages were either the result of claimant's negligence or intentional conduct. Benefits are allowed.

DECISION:

The April 23, 2009, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The benefits withheld effective the week ending April 4, 2009 shall be paid to claimant forthwith.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs