

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

MICHAEL A LORENZEN
519 ½ CENTRAL AVE APT 4
FORT DODGE IA 50501-3852

WELLS FARGO BANK
c/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-07883-H2T
OC: 07-09-06 R: 01
Claimant: Respondent (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/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 26, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 22, 2006. The claimant did not participate. The employer did participate through Chris Ten Eyck, Store Manager III and Michele Mills, Service Manager. Employer's Exhibit One was received.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a teller part time beginning May 23, 2006 through July 6, 2006 when he was discharged.

On the morning of July 6, 2006 the claimant's drawer was audited before he began working and it was discovered that he was short in his drawer by \$700.00. The shortage was from seven missing one-hundred dollar bills. The claimant could offer no explanation as to how the money came up missing after he locked the drawer on the last day he worked, July 3. No one had accessed the claimant's drawer since he closed it and locked it on the evening of July 3. The bank was closed for the July 4th holiday. The claimant was off work on July 5 when the employer received a complaint from a customer about an improper debit from his account for a money order on June 23. The claimant was the person who processed the customer's purchase of a money order on June 23. Because of the error on June 23, the employer determined to audit the claimant's drawer when he next returned to work. During the audit the employer opened the drawer in front of the claimant and another teller, Kari. When the drawer was opened the claimant immediately said "where's the rest of my money." There were no empty money slots, just a stack of one-hundred bills. The stack of one-hundred bills contained twenty bills and should have contained twenty-seven. The claimant by making the comment "where's the rest of my money" was indicating that he could tell from looking at a stack of one-hundred bills that the stack contained only twenty and not twenty-seven.

An examination of the claimant's balance ledger indicates that he forced the balance on July 3 when he was missing \$700.00. The claimant should have indicated that he was missing seven one-hundred dollar bills at the close of business on July 3.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 administrative law judge is persuaded that the claimant falsified his drawer balance on July 3, by alleging that his drawer contained seven more one-hundred dollar bills than it did. The claimant could not have been able to tell when the drawer was opened just from looking at that stack of bills that seven were missing from it. He was not discharged because he took any money that did not belong to him, but because he falsified his drawer records. The claimant owed the employer an honest accounting of the nature of his drawer. His falsification of records constitutes disqualifying misconduct. 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 July 26, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 \$1,670.00.

tkh/pjs