

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DYLAN J HARRIS
Claimant

APPEAL NO. 10A-UI-07062-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STEWART PETROLEUM CO
Employer

**Original Claim: 04/11/10
Claimant: Appellant (1)**

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Dylan Harris filed a timely appeal from the May 5, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 29, 2010. Mr. Harris participated and presented additional testimony through Patrice Taylor-Harris and Stacy Johnson. Dawn Stewart, co-owner, represented the employer. Exhibits One and Two were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dylan Harris was employed by Stewart Petroleum Company as a part-time convenience store clerk from July 2009 until April 12, 2010, when Dawn Stewart, co-owner, discharged him from the employment.

The final incident that triggered the discharge was Mr. Harris' failure to perform essential closing duties at the end of his shift on Sunday, April 11, 2010. The closing duties included running the daily cash report, removing all money except for the next day's petty cash from the cash register, counting the money, and securing the money and any checks received in the safe. Mr. Harris had performed the closing duties many times and was familiar with those duties. On April 11, 2010, Mr. Harris intentionally did not perform the end-of-day accounting and did not secure the employer's money in the safe because he was mad at Ms. Stewart. Ms. Stewart had been in the store earlier in the day during Mr. Harris' shift. Mr. Harris had taken the opportunity to speak to her about other employees' assertions that he was not performing his job duties. Ms. Stewart had issued a verbal reprimand that Mr. Harris thought was undeserved. This led to Mr. Harris' decision not to perform the end-of-shift accounting and to not secure the employer's money in the safe. This left \$500.00 to 800.00 in the cash register. The cash register could be opened by using a key that was always in the register. Mr. Harris had a key to the business and did secure the outside doors.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The weight of the evidence in the record indicates that Mr. Harris intentionally failed to perform end-of-day accounting and intentionally failed to secure several hundred dollars in revenue on April 11, 2010 because he was angry at the employer. This is in contrast to a situation where an employee merely forgets to perform duties, performs them carelessly, or is overwhelmed with duties. Mr. Harris' intentional failure to secure the business proceeds or perform the end-of-day accounting was in willful and wanton disregard of the employer's interests. Had the business been burglarized, the proceeds Mr. Harris had intentionally failed to secure would have been readily accessible to the thief. Mr. Harris' intentional failure to secure business proceeds also made them more readily susceptible to employee theft. Mr. Harris' intentional decision not to perform the end-of-day accounting interfered with the employer's accounting system and created a problem that had to be resolved by the owner at the start of the next business day. Mr. Harris' anger with the employer by no means justified his intentional decision

to leave the employer's business proceeds unsecured at the end of his shift or his decision not to perform the end-of-day accounting.

The weight of the evidence does not support Mr. Harris' assertion that he was discharged based on his appearance.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Harris was discharged for misconduct. Accordingly, Mr. Harris is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Mr. Harris.

DECISION:

The Agency representative's May 5, 2010, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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