

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC WOODWORTH
Claimant

APPEAL NO. 08A-UI-10422-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC
Employer

**OC: 08/31/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated October 27, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 20, 2008. The claimant participated. The employer participated by Phlyss Jenkins, Current Facility General Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from September 14, 2007 until April 14, 2008 when he was discharged for cash register errors. Mr. Woodworth held the position of full-time cashier and was paid by the hour. His immediate supervisor was Shawn Ashby.

The claimant was discharged after it was determined that he had two cash register shortages within two days. On April 11, 2008 the claimant was \$210.00 short and on April 13, 2008 \$175.00 short. Mr. Woodworth could not explain the cash register discrepancies. The claimant had previously been warned for cash register discrepancies as well as for watching television and being late in reporting for work. Since his most recent warning, the claimant had attempted to improve his punctuality and had done so. The claimant limited any time spent watching television although he felt that he had not violated the policy in the past. The claimant could not explain the cash discrepancies in the high volume cashier position but had attempted to minimize any errors after receiving a previous warning.

It is the employer's position that the claimant should have been discharged from his position of a cashier earlier based upon previous cash shortages as well as his previous habitual tardiness

and watching television issues. Ms. Jenkins was not the manager at the time of the claimant's discharge from employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Woodworth was discharged for intentional misconduct in connection with the employment. It does not.

The evidence in the record establishes that the claimant had previously been warned for cash shortages, tardiness and watching television. The claimant testified under oath that after being warned he had attempted to improve his punctuality and had minimized any viewing of television. The claimant further testified that he could not explain the cash shortages although he had attempted to more closely watch his cash transactions after being previously warned.

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 denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of unemployment insurance 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 Court of Appeals 1992). Misconduct is found in deliberate acts or omissions which constitute a material breach of the worker's duty to the employer or repeated acts of carelessness or negligence. Poor performance due to inability is generally not considered misconduct. Cash register errors especially in high-volume establishments, truck stops, convenience stores and fast-food restaurants are in most instances not considered to be negligence or carelessness that justify disqualification from unemployment insurance benefits in the absence of the showing of some personal culpability on the part of the claimant.

The question in this case is not whether the employer had a right to discharge Mr. Woodworth but whether the discharge was disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the employer has not sustained its burden of proof in showing intentional disqualifying misconduct at the time of separation.

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.

DECISION:

The representative's decision dated October 27, 2008, reference 01, is affirmed. The claimant was dismissed under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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