

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTY A CAMDEN
Claimant

APPEAL NO. 12A-UI-14209-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

"SLB OF IOWA LC
Employer

**OC: 11/04/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated November 30, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 7, 2013. Claimant participated. The employer participated by Mr. Tom Reavis, Human Resource Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Christy Camden was employed by the captioned employer d/b/a Panera Bread from January 15, 2011 until October 29, 2012 when she was discharged from employment. Ms. Camden was employed as a full-time certified trainer/cashier and was paid by the hour. Her immediate supervisor was Cynthia Karella.

Ms. Camden was discharged on October 29, 2012 when the cash register drawer was short that day. Claimant had received approximately three previous warnings for having shortages in her cash drawer. The last warning was issued to the claimant on October 26, 2012.

At the time of the claimant's discharge, Ms. Camden was involved in training a new employee. The new employee had access to the claimant's cash drawer throughout the work day as part of the training process. At times the claimant was unable to observe the cash drawer due to other duties and/or break times. It is a common practice at the facility where Ms. Camden was employed for employees to use each other's cash drawers during busy periods.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 establishing job disqualifying 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 the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. Such misconduct must be "substantial." When based upon 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 1988). Inasmuch as the evidence in the record establishes that

Ms. Camden was training a new employee and that that employee had access to the claimant's cash drawer throughout the day for training purposes and that other employees as well commonly used each other's cash drawers, the evidence in the record does not establish intentional, disqualifying misconduct on the part of the claimant. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated November 30, 2012, reference 01, is affirmed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs