

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY BLIND
Claimant

APPEAL NO. 09A-UI-09915-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLS BANK & TRUST CO
Employer

**Original Claim: 06/07/09
Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Hills Bank & Trust Company (employer) appealed an unemployment insurance decision dated July 7, 2009, reference 01, which held that Kelly Blind (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 28, 2009. The claimant participated in the hearing. The employer participated through Joan Frieden, Human Resources Director; Brianne Buelow, Teller Supervisor; and Deb Schaffer, Branch Manager. Employer's Exhibits One through Five were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a part-time teller on May 20, 2008 and became full-time on December 17, 2008. She was discharged on June 2, 2009 after a routine audit confirmed that she force-balanced her cash drawer on Friday, May 29, 2009. Force-balancing a cash drawer is an act of dishonesty. The employer's balancing policies provide that an employee may be discharged immediately for a problem involving, "dishonesty, the deliberate concealment of an offage, such as forcing a balance, or illegal conduct on Hills Bank premises." The claimant was aware that termination could result from a forced balance.

At the end of the day, each teller balances his or her cash drawer with the teller computer accounting system. This entails counting each area of the cash drawer (all denominations which include coin) and entering the amounts into the computer accounting system, which tracks the cash in and cash out totals for the day. The resulting two numbers are expected to balance to the penny each day. If the numbers are different, it indicates an "offage" which

requires an investigation as to where the error occurred. If the error cannot be found, the bank has to write off the offage.

The claimant had already received five written warnings for offages in 2009 that resulted in write-offs. Employees can be discharged for continued offages. On May 29, 2009, the claimant's supervisor discussed with her the problem of her repeated offages and told her it needed to be corrected.

The claimant balanced her cash drawer with the computer system on Friday, May 29, 2009 and it balanced. On the following morning, Supervisor Brianne Buelow and teller Ashley Guy performed a routine quarterly audit of the claimant's cash drawer and found it was out of balance by \$3.01. The claimant was out of balance in three separate areas/denominations. She documented that there were \$28.00 in two dollar bills, \$9.00 in one dollar bills, and 48 cents in pennies. The audit showed there were \$26.00 in two dollar bills, \$8.00 in one dollar bills and 47 cents in pennies. The supervisor and Ms. Guy added up everything again to ensure they had not made a mistake but they had been accurate. The claimant's balance should have been off by \$3.01 on May 29, 2009 but since it was documented as balanced, the only explanation was that she "force-balanced" her drawer. This means that she input incorrect information so the totals would match and would hide that the cash drawer was out of balance. A forced balance could be done but not caught if an audit was not performed on the following day.

The employer met with the claimant on June 1, 2009 to give her an opportunity to explain the situation but the claimant could offer no explanation. The employer reviewed the matter with the retail banking director, the human resource director, and the vice-president of sales and service, who has a background in teller systems. The employer also consulted a teller trainer to ask if it might be possible that something else could have happened. The trainer reported that the fact that the claimant was off in three separate denominations eliminated it being an innocent error and the only explanation was that the claimant forced the balance. The claimant was discharged for an act of dishonesty.

The claimant filed a claim for unemployment insurance benefits effective July 7, 2009 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on June 2, 2009 for an act of dishonesty as a result of force-balancing her cash drawer on May 29, 2009. She denies that she force-balanced her drawer but is unable to offer another viable explanation. Even if she did not follow proper policies, which she claims is the case, her balance should have still been off by \$3.01 on May 29, 2009. The employer has met its burden. The claimant's forced balance on May 29, 2009 shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated July 7, 2009, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw