

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY BRANDT
Claimant

APPEAL NO: 08A-UI-01270-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

OC: 01/06/08 R: 02
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Caseys Marketing Company (employer) appealed an unemployment insurance decision dated January 28, 2008, reference 01, which held that Amy Brandt (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 February 20, 2008. The claimant participated in the hearing. The employer participated through Bo Knop, Area Supervisor. 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 considered all of the evidence in the record, finds that: The claimant was employed as a part-time cashier from July 19, 2007 through December 20, 2007 when she was discharged. The employer has a daily report system that red flags certain transactions such as voided cigarette and beer sales. Voiding is a common method of employee theft. An employee enters an item twice on the cash register, voids it and then re-rings the item only once. The employer regularly conducts audits to review the daily reports. On approximately December 18, 2007, the employer was conducting an audit to review voided tickets and he first went through the electronic journal. He found a voided ticket completed by the claimant on December 9, 2007 for a 24-pack of beer. Following the voided entry, the claimant hit no sale and the beer was not rung up again. The claimant put price check on the receipt since employees are required to manually write an explanation for the voided item. The employer followed up by reviewing the video surveillance tapes for that same time frame. He saw the claimant void the beer sale but she then charged the customer the price for the beer which was approximately \$25.00 and it was paid by the customer. The claimant gave that customer the beer and the customer proceeded to take the beer out of the store. The claimant did not even glance at the customer as he was leaving. Since she took the money but failed to ring in the cost of the beer in the cash register, her cash balance should

have been over at the end of her shift but there was no extra money in the register. The employer questioned the claimant about the incident on December 20, 2008 and she kept saying, "I don't know." The employer showed the claimant the receipt price check and she continued to deny knowing anything about it. The claimant was discharged at that time for suspected theft.

The claimant filed a claim for unemployment insurance benefits effective January 6, 2008 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 section 96.5-2-a.

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 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 for suspected theft. The employer thought the claimant was a good cashier and hoped she could provide a reasonable explanation for her actions. However, without a valid explanation, the evidence was clear that

the claimant was responsible for misappropriation of employer funds on December 9, 2007. The claimant's actions show 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 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 unemployment insurance decision dated January 28, 2008, 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 claimant is overpaid benefits in the amount of \$636.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs