

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**DEBRA D MUHLENBERG
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WATERLOO IA 50703-3009**

**ALLEN MEMORIAL HOSPITAL
ATTN PAYROLL
1825 LOGAN AVE
WATERLOO IA 50703**

**Appeal Number: 06A-UI-02375-H2T
OC: 01-29-06 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 17, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 16, 2006. The claimant did participate. The employer did participate through Ken Leibold, Director of Human Resources and Mary Dvorak, Team Leader. Employer's Exhibit One was received. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a shift supervisor in the housekeeping department full time beginning March 29, 2000 through February 3, 2006 when she was discharged. The claimant

was discharged when the employer discovered her theft of \$105.00. The employer installed a surveillance camera in an area of the hospital where petty theft had been taking place in an effort to catch the culprit. The claimant worked as a supervisor in the housekeeping department and had access to the locked file drawer where the petty cash was kept. The employer's surveillance video, taken on January 19, 2006, was shown to the claimant when she was discharged. It shows the claimant checking to see if the drawer was locked, then retrieving a key and unlocking the drawer and taking the money out of the drawer. No one else entered the locked file cabinet after the claimant did. During the fact-finding interview the claimant said she was getting in the drawer to get a Kleenex. No Kleenex are kept in the drawer and a box of Kleenex is clearly visible on the counter above the locked file drawer. At hearing the claimant claimed she was entering the drawer to get a receipt for some unnamed friend. The claimant had no business purpose taking a receipt or anything else out of the drawer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer's surveillance video persuades the administrative law judge that the claimant was the person who took the money out of the locked filing cabinet drawer. The claimant's allegation that some unnamed person has confessed to her in an anonymous letter to her is not persuasive. The letter is the claimant's attempt to deflect attention from her own theft. The claimant had no business being in the locked filing cabinet drawer. Her allegation that she was seeking a receipt is not credible in light of the missing money and the claimant's refusal to explain who she needed the receipt for or why she needed it. The employer has established misconduct. Benefits are denied.

DECISION:

The February 17, 2006, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

tkh/s