

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY L ASH
Claimant

HARBOR FREIGHT TOOLS USA INC
Employer

APPEAL 20R-UI-01094-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/17/19
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On December 20, 2019, the employer filed an appeal from the December 10, 2019, (reference 01) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 16, 2020. Claimant did not participate. An administrative law judge issued a decision denying benefits. Claimant filed an appeal with the Employment Appeal Board. The Employment Appeal Board remanded the case for a new hearing. The hearing was scheduled for February 21, 2020. The parties were properly notified of the hearing. Claimant participated. Employer participated through store manager Casey Oberreuter. Employer's Exhibits 1 and 2 were received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 11, 2018. Claimant last worked as a full-time senior sales associate. Claimant was separated from employment on November 20, 2019, when she was terminated.

As a senior sales associate, claimant was responsible for maintaining a cash register and handling all cash transactions as accurately as possible.

Employer has a Cash Over/Short Policy and Procedure. The policy states that if an employee's register drawer contains \$5.00 more or less than what is reflected in register records, the employer will issue a written warning. If an error of more than \$5.00 occurs within six months of

the previous error, the employee will receive an additional written warning. A third error within the six months of a previous error will result in a final, written warning. An error within six months of a final warning will result in termination. Claimant was aware of the policy.

On July 8, 2018, claimant's drawer was \$5.00 over. Employer gave claimant a written warning.

On October 8, 2018, claimant's drawer was off by \$20.10. Employer gave claimant a written warning.

On February 9, 2019, claimant's drawer was over by \$5.26. Employer gave claimant a written warning.

On April 6, 2019, claimant's drawer was short by \$20.76. Employer gave claimant a written warning.

On May 31, 2019, claimant's drawer was short by \$26.00. Employer gave claimant a final warning.

On August 18, 2019, claimant's drawer was over by \$7.50. Employer gave claimant a second final warning.

On November 16, 2019, claimant's drawer was over by \$9.72.

On November 20, 2019, employer terminated claimant's employment.

Claimant counted change back to customers and did the job to the best of her ability. There was never an extended period of time during which claimant had no cash handling errors.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.32(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 job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant made several cash handling errors throughout her employment. Employer did not establish the errors occurred with such frequency to suggest wrongful intent or evil design. The evidence shows claimant was making her best efforts to correct the deficiencies, but simply was unable to do so. There was no extended period of time where claimant was able to perform the job to employer's satisfaction. It is also important to note that there is no suggestion that claimant was pocketing the money herself, as often the cash handling inaccuracies resulted in an overage in the register drawer, as opposed to the drawer being short.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Here, employer failed to establish claimant intentionally violated or was intentionally careless in violating its cash handling procedures. While employer may have made a good business decision in ending claimant's employment, it did not establish she was terminated for misconduct.

Because benefits are allowed, the issues regarding overpayment of benefits are moot and will not be discussed further in this decision.

DECISION:

The December 10, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

February 26, 2020
Decision Dated and Mailed

cal/scn