

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE Y WALKER
Claimant

APPEAL NO. 11A-UI-08353-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 05/22/11
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 13, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 2, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Renee Smith participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time as a store manager for the employer from May 28, 1998, to May 17, 2011. She was informed and understood that under the employer's work rules, sales were only to be voided when a mistake was made on the sale and the sale needed to be avoided to correct the error. It was an unusual event for a transaction to be voided the day after a transaction had been completed, using the "post void" process.

In May 2011, the district manager noticed that the claimant had entered an excessive number of post voids and she was processing the post voids on the morning after the shift in which the sale was entered in the register. The district manager was suspicious so she concluded an investigation, including viewing video surveillance of the claimant. The video surveillance showed the claimant entering the post voids and then re-ringing up a sale as if the customer had provided a coupon, which allowed the claimant to take money from the employer. This was done on multiple occasions through May 13. The district manager also observed on the video that the claimant's husband was often in the store and took products without paying for them with the claimant's knowledge.

As a result of the claimant's dishonest conduct observed by the district manager, the claimant was discharged on May 17, 2011.

The claimant filed for and received a total of \$3,123.00 in unemployment insurance benefits for the weeks between May 22 and July 23, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

If the claimant is convicted of a felony or admits in writing to such an offense, it should be reported to the Agency to determine if the claimant is subject to a gross misconduct disqualification that would remove all her wage credits.

DECISION:

The unemployment insurance decision dated June 13, 2011, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid

wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs