

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA DRIPPS**

Claimant

**APPEAL NO: 09A-UI-17878-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LABOR READY MIDWEST INC**

Employer

**OC: 10-25-09**

**Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge/Misconduct

Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 20, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 6, 2010. The claimant participated in the hearing. Brian Morgan, Investigator and Stephanie Figgins, Regional Business Partner, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time training branch manager for Labor Ready Midwest from February 10, 2003 to October 22, 2009. On October 14, 2009, Investigator Brian Morgan received a complaint that the claimant might be involved in fraudulent activity. The allegations concerned two temporary employees being paid in full and then paid a second time by the claimant, who was alleged to have been keeping that money for herself. She did so by going back into the computer, regenerating a payment code, taking it to the cash dispensing machine (CDM), withdrawing the money from the machine and keeping it. The workers in question, Jarrod L'Heureux and Roger Slobotski, did not have applications on file in the branch, which was contrary to the employer's practices, and therefore Mr. Morgan was unable to get information from their applications and verify their signatures on work tickets. Michael Nicolosi, a customer service representative in the claimant's branch who was previously a training branch manager himself, stated he had never met Mr. L'Heureux and questioned whether he had ever been in the branch office at all but the computer showed he had been paid by the claimant on several recent occasions. Mr. Nicolosi also told Mr. Morgan there were very few signed work tickets which are provided by the employee, signed by the customer and used to pay the employees. District Manager Steven Brandt contacted the customer involved with Mr. L'Heureux and Mr. Slobotski and asked when they last worked and the customer stated Mr. L'Heureux had not worked for several months although he was paid by the claimant long

after his last day worked. The employer's system did not show any hours worked for Mr. L'Heureux from April through September 2009. Mr. Morgan could not find the necessary documentation in the branch office to make a determination regarding Mr. Slobotski but after speaking to him Mr. Morgan concluded it was more likely than not that he did perform work for the customer but without the proper paperwork. It was discovered there were multiple missing work tickets that should have been on file for years. Mr. Nicolosi noticed there were several double payments to employees sent to work at Zimmerman Sales and Services and when he asked for an explanation the claimant stated the employees were receiving bonuses for staying to the end of the season but the double payments were paid weekly. There were four workers involved. Mr. Morgan was only able to contact one of the employees, Zachary Henken, and he stated he never received two payments on the same day and never received a bonus. The employer's video system showed the claimant at the CDM each time the second payment was made. The claimant testified she was getting the employees' bonuses from the CDM and taking them to the job site. It is not the employer's practice, and in fact it is discouraged for an employee to retrieve cash for workers from the CDM and take it to the job site because there is the possibility of theft by or from the employee and also the possibility of fraud. The total amount of questionable tickets was \$9,945.77 and of that amount \$9,833.00 was cleared through the CDM. The claimant was suspended with pay October 15, 2009, and notified of her termination of employment October 22, 2009, following the investigation.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant denies any wrongdoing, she engaged in practices that aroused the employer's suspicions and after an investigation the employer determined her behavior warranted termination. The employer testified that bonuses were not given to employees, and Mr. Henken, one of the workers in question, stated he was never paid twice in one day and never received a bonus, yet the claimant was observed on video at the CDM at all times the second payment was made. Additionally, the employer does not want its employees even going to the CDM and it is not the employer's practice to take checks to the employees' work sites. There were also incidents involving the payment of one employee who did not perform any work between April and September 2009 and should not have had any work tickets or payments for that time period but the employer discovered payment records for him. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

#### **DECISION:**

The November 20, 2009, reference 01, decision is reversed. 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. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs