

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIM S WARD
Claimant

APPEAL NO. 12A-EUCU-00178-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CIGARETTE OUTLET INC
Employer

**OC: 02-13-11
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 4, 2012, reference 05, decision that denied benefits. After due notice was issued, a hearing was held on July 10, 2012. The claimant did participate. The employer did participate through Tony Gripp, district supervisor.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a clerk, part-time, beginning in March 27, 2012, through May 8, 2012, when she was discharged. The claimant was responsible for all shortages in her drawer. At the beginning of each shift, she counted down her drawer to insure that she was starting with the correct amount of money. She had a key to lock her drawer if she had to step away from it while she was working in the store. The claimant was the only person allowed access to her cash drawer while she was working. At the end of her shift, she would count down her drawer to insure that she had performed all transactions correctly. The claimant had the ability to count down her drawer after her shift so that she could determine if it was short or not. The claimant had been given the employer's handbook, which put her on notice that if she had more than three shortages or overages in her drawer, she would be discharged. On April 23 the claimant's drawer was short \$7.32, on April 24 her drawer was short \$8.98, and on May 1 her drawer was short \$39.87. That was her third write-up in just over 30 days of employment. She was given a final warning at that time and put on notice that any additional shortages in her drawer over or under \$5.00 would result in her discharge. On May 6, the claimant's drawer was again short \$9.00 dollars. The claimant had days she worked where her drawer was not short, illustrating that she could work accurately on some occasions. The claimant was not discharged because the manager disliked her, but because her drawer was so consistently short. It was within the claimant's ability to control all of the money in her drawer. She alone had access to the drawer and could drop the money into the floor safe after her shift.

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 § 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant had sole access to her cash drawer, including counting it down at the start of her shift and after her shift. After each shift, the claimant would drop the money into a floor safe that was not accessible by any other employee. The shortages were the claimant's responsibility. She had been able to correctly count down her drawer and make change on many days she worked. Claimant's repeated failure to accurately perform her job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The June 4, 2012 (reference 05) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw