

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PENNY L MONTGOMERY**  
Claimant

**APPEAL NO. 09A-UI-08735-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PARCO LTD**  
Employer

**OC: 05/10/09**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Parco, Ltd. filed an appeal from a representative's decision dated June 15, 2009, reference 01, which held that no disqualification would be imposed regarding Penny Montgomery's separation from employment. After due notice was issued, a hearing was held by telephone on July 17, 2009. Ms. Montgomery participated personally. The employer participated by Pam Pray, Human Resources Director.

**ISSUE:**

At issue in this matter is whether Ms. Montgomery was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Montgomery was employed by Parco, Ltd., doing business as Wendy's Old Fashioned Hamburgers, from April 11, 2008 until April 28, 2009. She worked from 25 to 30 hours each week as a crew member. She was discharged for failing to ring in sales.

The conduct that prompted Ms. Montgomery's discharge occurred on April 22. During one transaction, a customer ordered a double cheese combo, costing approximately \$6.00. The customer paid for the order, received the combo meal, and left the counter. Ms. Montgomery re-rang the order to reflect only a double cheeseburger, which cost approximately \$3.00. On a second transaction, the customer ordered a salad, a small chili, and a beverage. After the customer paid for and received the full order, Ms. Montgomery re-rang the order to delete the salad. The fact that she re-rang orders after both customers were given all items ordered was observed by some of Ms. Montgomery's coworkers and reported to management.

The employer met with Ms. Montgomery on April 23 regarding the allegations made by her coworkers. She denied that she improperly re-rang any orders. No one witnessed her taking

any money belonging to the employer. After an investigation, the decision was made to discharge her and she was notified of the discharge on April 28, 2009.

Ms. Montgomery filed a claim for job insurance benefits effective May 10, 2009. She has received a total of \$1,240.00 in benefits since filing the claim.

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

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Montgomery was discharged for re-ringing purchases to reflect a lower cost than actually paid by the customers. Other crew members were within close enough proximity to her to be able to witness her actions and the fact that the customers actually received all of the items for which payment was made.

Ms. Montgomery's actions constituted dishonesty, which is clearly contrary to the type of behavior an employer has the right to expect. By re-ringing the orders for a lesser amount, she would not have to account for the additional money actually paid by the customers. For the reasons stated herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Montgomery has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

#### **DECISION:**

The representative's decision dated June 15, 2009, reference 01, is hereby reversed. Ms. Montgomery was discharged for misconduct in connection with her employment. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Montgomery will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs