

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CYNTHIA K SPARROW**  
Claimant

**APPEAL NO. 09A-UI-15752-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEAVER ENTERPRISES LTD**  
Employer

**OC: 09/06/09**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Weaver Enterprises Ltd. (Weaver), filed an appeal from a decision dated October 12, 2009, reference 01. The decision allowed benefits to the claimant, Cynthia Sparrow. After due notice was issued a hearing was held by telephone conference call on November 23, 2009. The claimant participated on her own behalf. The employer participated by Director of Operations Terry Moffitt and Area Supervisor Chuck Vandenburg.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Cynthia Sparrow was employed by Weaver from April 24, 2006 until September 9, 2009 as a full-time assistant manager. During the course of her employment she had received written warnings for poor work performance. Her duties included doing “counts” of money and inventory and she would often make errors in counting money at the end of the shift, using incorrect forms, or incorrectly dated forms, for the counts and submitting incomplete reports.

In August 2009 she received a written warning regarding violation of cash handling policies. She had accessed more than one cash drawer during her shift and allowed other employees to access more than one drawer. The warning notified her that any further violations of cash handling policies could result in discharge.

On September 8, 2009, Ms. Sparrow was the closing manager. The cash count was \$94.00 short. Company policy requires the area manager to be notified if there is more than a \$5.00 overage or shortage. If the overage or shortage is more than \$50.00, the director of operations must be notified. Ms. Sparrow did not notify either the area supervisor or the director of operations of the shortage, though she did notify the general manager.

The next day the general manager notified the area supervisor and he came to the store to review the paperwork. The shortage was found but the claimant was discharged for failing to notify the appropriate personnel of the shortage.

Cynthia Sparrow has received unemployment benefits since filing a claim with an effective date of September 6, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

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 claimant had been advised her job was in jeopardy as a result of her failure to follow proper cash handling procedures. In spite of the warning she did not do the final money count correctly and did not inform the appropriate supervisory personnel of the substantial shortage. The employer must have stringent cash controls because of the high volume of cash and the claimant's conduct interfered with its ability to properly track cash handling in the store. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of October 12, 2009, reference 01, is reversed. Cynthia Sparrow is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs