

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHFANIE MAYO
Claimant

APPEAL NO. 13A-UI-12414-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALDS
Employer

**OC: 10/13/13
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

The employer, McDonalds, filed an appeal from a decision dated November 4, 2013, reference 01. The decision allowed benefits to the claimant, Stephfanie Mayo. After due notice was issued a hearing was held by telephone conference call on November 27, 2013. The claimant participated on her own behalf. The employer participated by Area Supervisor Scott Ames.

ISSUES:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

FINDINGS OF FACT:

Stephfanie Mayo was employed by McDonalds from November 2008 until October 15, 2013, as a part-time shift manager. In July 2013, the store started experience cash shortages of greater frequency than usual. An investigation was started in August 2013.

The cash registers drawers are pulled at 4:00 p.m. every day and at closing and a report is printed out showing what amount of cash should be in the drawer according to the transactions. Drawers pulled at 4:00 p.m. are counted the same day and drawers pulled at closing are counted the next day. A manager counts all the drawers, the information is put into a computer and any shortage will be reported at that time. When the shortages were reported during the investigation General Manager Lea Freyberger would view the video surveillance footage of that particular register to look for suspicious activity.

The shortages could not be linked to a particular employee as they occurred on different drawers run by different employees. The only commonality was when Ms. Mayo would count down the drawers in the back room after they had been pulled. Video of the claimant counting

the drawers and putting them in the safe were viewed by Ms. Freyberger who referred them to Area Supervisor Scott Ames. Both saw the claimant have something in her hand which she would then put in a pocket or down the front of her shirt. When her hand would be moved away it would be empty.

The area supervisor and the general manager met with the claimant on October 15, 2013. She was told about what had been viewed on the video and the employer's conclusion she had been taking money while counting the drawers. At first she denied it but could offer no explanation for the increased shortages in the drawers which were being counted by her. Eventually she did admit to taking the money and signed the termination report verifying that.

Stephanie Mayo has received unemployment benefits since filing a claim with an effective date of October 13, 2013. The employer did participate in the fact-finding interview.

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 was discharged for theft of money from the employer. The investigation was thorough and did not automatically focus on any one particular employee, only the drawers which were short. While shortages do occur in every business, the increased incidents were sufficient to cause concern with the employer.

The video footage was watched by two different managers who reached the same conclusion that Ms. Mayo was the common factor in the shortages. She could not explain this when offered the opportunity to do so. The administrative law judge concludes the employer has met its burden of proof by a preponderance of the evidence to show the claimant was stealing money from the cash drawers. Theft 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.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's decision of November 4, 2013, reference 01, is reversed. Stephanie Mayo is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The claimant is overpaid \$1,416.00, and this must be recovered in accordance with the provisions of Iowa law.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs