

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH A MANGO**  
Claimant

**APPEAL NO: 08A-UI-03044-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOLLYWOOD ENTERTAINMENT  
HOLLYWOOD VIDEO**  
Employer

**OC: 02/24/08 R: 03  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Hollywood Entertainment (employer) appealed a representative's March 17, 2008 decision (reference 01) that concluded Joseph Mango (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 10, 2008. The claimant participated personally. The employer participated by Charles Petrella, District Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 26, 2007, as a full-time store manager. The employer provided the claimant with a copy of the employer's Operations Manual. In addition the employer had weekly telephone training sessions. The claimant was the sole employee in the store while the sessions were being held. He felt as though he may have missed information because of his duties.

On December 9, 2007, a customer presented a credit for payment. The claimant swiped the card and received no response from the machine. The claimant punched the credit card numbers into the machine. The machine approved the transaction and the customer signed the receipt.

In mid-January 2008, the employer informed the claimant he did not follow the employer's procedures in a handbook issued in October 2007. The employer told the claimant he should have taken a pencil rubbing of the card. The claimant contacted the Human Resources Department to try to find a copy of the policy. The Human Resources Department could not find the policy. The employer terminated the claimant on February 13, 2008, for a policy infraction that occurred on December 9, 2007.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct. There were 66 days between the claimant's actions and the termination. There was approximately one month between the claimant's knowledge of the problem and the termination. The alleged misconduct is too remote from the termination. The employer did not provide sufficient evidence of good cause for the delay in termination. The employer has failed to

provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's March 17, 2008 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs