

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUDIE OGLESBEE

Claimant

APPEAL NO. 11A-UI-12977-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 09-04-11

Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge/Misconduct

Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 22, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 24, 2011. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Sherry Decker, area supervisor, participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-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 full-time store manager for Casey's from October 4, 2010 to September 2, 2011. On August 16, 2011, the paper day sheet completed by the claimant showed an overage of \$8.70 (Employer's Exhibit Seven). The daily sales log showed a shortage of \$72.95 (Employer's Exhibit Seven). The manual credit cards, in the amount of \$81.65, were added to the correct "credit card type" line, but the manual credit card line was not zeroed out as the claimant was instructed by the Manager's Retail Instruction Manual. Without the manual credit cards zeroed out, the paper day sheet should have reflected plus \$81.65 (Employer's Exhibit Seven). One drop by an employee of \$100.00 had been edited to show \$20.00 instead of the \$100.00 dropped and the surveillance tape clearly showed he pulled several \$20.00 dollar bills from the register, counted the money and dropped it into the safe (Employer's Exhibit Seven). Whether the drop was recorded on the shift audit sheet was not in view of the surveillance view (Employer's Exhibit Seven). On August 23, 2011, the paper day sheet completed by the claimant showed a shortage of \$22.78 and on August 24, 2011, the day sheet shows plus \$25.16, as completed by another employee (Employer's Exhibit Seven). The daily sales log from August 23, 2011, shows a shortage of \$123.28 and the August 24, 2011, day sheet shows an overage of \$25.16 (Employer's Exhibit Seven). The August 23, 2011, shift

drops and shift loans did not match (Employer's Exhibit Seven). A shift drop was edited to match the shift drop of \$595.50, which reflects the \$100.50 shortage on the daily sales log (Employer's Exhibit Seven). On August 29, 2011, the claimant did the daily paper day sheet with a \$13.93 overage (Employer's Exhibit Seven). The daily sales log showed a shortage of \$86.07, a \$100.00 difference (Employer's Exhibit Seven). The shift drops and shift books did not match (Employer's Exhibit Seven). A shift drop was edited from \$507.50 to \$607.50 and the following shift drop was not edited to match the shift drop of \$607.50 (Employer's Exhibit Seven). That represented the \$100.00 shortage showing up on the daily sales log (Employer's Exhibit Seven). The employer's honesty and integrity policy and the employer's Retalix system policy were violated by the claimant, and because the claimant's inaccurate bookkeeping resulted in \$280.50 in unaccountable shortages for the month of August 2011, and the claimant was responsible for the bookkeeping, her employment was terminated September 2, 2011.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was responsible for the bookkeeping for the store and there was a shortage of \$280.50 for August 2011. The claimant was capable of accurately doing the book work for the store, as demonstrated by her previous monthly and daily performance, but failed to perform the bookkeeping to the employer's standards on at least three occasions in August 2011. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The September 22, 2011, reference 01, decision is reversed. 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. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw