

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**AMBER M HEMANN
1628 PARKTOWN PL NE APT #3
CEDAR RAPIDS IA 52402**

**KWIK SHOP INC
c/o EMPLOYERS UNITY INC
PO BO 749000
ARVADA IA 80006-9000**

**Appeal Number: 04O-UI-10592-DWT
OC: 07/04/04 R: 03
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kwik Shop, Inc. (employer) appealed a representative's July 20, 2004 decision (reference 01) that concluded Amber M. Hemann (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. Initially, a hearing was held on August 27, 2004. Cyndi Murla, a representative with Employers Unity, Inc., appeared on the employer's behalf with Chuck Kacere, the store manager, as a witness. The claimant did not participate in the hearing. Based on the testimony presented by the employer, an administrative law judge affirmed the July 20, 2004 decision.

The employer appealed this decision to the Employment Appeal Board. The tape recording of the hearing could not be reviewed. As a result, the Employment Appeal Board remanded this matter to the Appeals Section for a new hearing.

After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on October 20, 2004. The claimant again did not participate in the hearing. Cyndi Murla, a representative with Employers Unity, Inc., again appeared on the employer's behalf with Chuck Kacere, the store manager, as a witness. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 7, 2003. Initially, the claimant started as a part-time employee, but later worked full time. She worked as a cashier. In January 2004, Kacere talked to the claimant about cash shortages she had on January 7, 9 and 10. She was \$19.00 and \$20.00 short these days. The employer warned the claimant she needed to be very careful so she did not have cash shortages of this amount. The employer warned the claimant that if she did not improve, she would be discharged. The employer did not have any significant problems with cash shortages until June 12, 2004.

On June 12, 2004, the claimant reported that her cash balanced at the end of her shift. The second shift person that took over the same cash register was short \$10.00. On June 17, 2004, the claimant reported she had eight five-dollar bills and her drawer balanced. The person who replaced the claimant, counted the drawer after the claimant left and had only six five-dollar bills. The employer did not say anything to the claimant. Instead, the employer waited to see if there were any further problems. On June 19, 2004, the claimant reported her cash drawer balanced but the employee who replaced her determined she was \$10.00 short at the end of her shift. When the employer confronted the claimant about the discrepancy, the claimant told Kacere she had counted the money in front of another employee and had no idea how she could be short \$10.00 these days. The employer discharged the claimant on June 19, 2004 for having repeated cash shortages.

The claimant established a claim for unemployment insurance benefits during the week of July 4, 2004. She has not received any benefits since she established her claim.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Without any testimony from the claimant, a preponderance of the evidence establishes the employer discharged the claimant for work-connected misconduct. In January 2004, the claimant knew or should have known her job was in jeopardy if she failed to do her job carefully

enough so she would not be significantly short at the end of her shift. The fact the claimant was short \$10.00 the last three days of her employment indicates the claimant either did something intentionally or she was so negligent in the performance of her job that she committed work-connected misconduct for unemployment insurance purposes. Therefore, as of July 4, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 20, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 4, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/kjf