

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE L OLSON

Claimant

APPEAL NO. 09A-UI-17314-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

**Original Claim: 10/18/09
Claimant: Respondent (2-R)**

Section 96.5-2-a – Misconduct
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated November 6, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 23, 2009. The employer participated by Curt Fox, manager. The claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Curt Fox and Employer's Exhibits 1 and 2.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer owns and operates convenience stores. The claimant worked at a store located in Ankeny, Iowa. The claimant was hired on February 26, 2009, as a full-time clerk. She was terminated on October 20, 2009, for theft of cash in the approximate amount of \$600.00.

One of the products sold by Casey's is cigarettes, and the manager, Curt Fox, noticed the weekend before the claimant's termination that the cigarette inventory did not match the cigarette sales. There were far fewer packs of cigarettes on hand than sales records showed. Mr. Fox then reviewed the surveillance video and discovered that the claimant was selling cigarettes and taking a customer's money. She would then push a button indicating that no sale had been made. The customer would get the cigarettes and change, but there would be no record of the sale. The claimant then retrieved the money for the cigarettes from the cash drawer.

Mr. Fox discovered what the claimant was doing on October 19, 2009, and then met with her on October 20, 2009. The claimant admitted to the theft, saying she needed money for rent. She was then terminated for theft of company property. A company policy stated that theft was grounds for termination.

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.

Misconduct that leads to disqualification from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the duty a worker owes to the employer. One of the most fundamental duties a worker owes to the employer is honesty. An employer can reasonably expect that an employee will not steal company property. A breach of that duty constitutes misconduct.

In this case, the evidence established that the claimant deliberately took money from the cash register and appropriated it for her own use. The employer only had 30 days of surveillance tape, but during those 30 days there were repeated instances of where the claimant would ring up a "no sale" for cigarettes and then later take the money from the register. The employer not only lost the product, but lost the money given by the customer for the product. The claimant's conduct was deliberate and done over at least a month's time. Misconduct has been established. Benefits are denied.

The next issue is overpayment of benefits.

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 issue of the overpayment of benefits is remanded to the claims section for determination.

DECISION:

The representative's decision dated November 6, 2009, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of overpayment of benefits is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw