

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN L BEARD**  
Claimant

**APPEAL NO: 14A-UI-01403-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KUM & GO LC**  
Employer

**OC: 01/05/14**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a – Discharge  
Iowa Code § 96.3(7) – Overpayment of Benefits

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's January 30, 2014 determination (reference 02) that held her qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated at the March 5 hearing. Diane Shaw, the sales manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits and has been overpaid benefits.

**ISSUES:**

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

Has the claimant been overpaid any benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer in August 2013. She worked as a full time overnight cashier. The employer's policy informs employees they are not allowed to buy lottery tickets while working and employees are not supposed to buy any lottery tickets at the location where they work.

In December 2013, the employer received complaints from two customers that their debit cards had been overcharged when they made a purchase at the employer's store. The customers reported that the claimant asked if they wanted any cash back and they both told her no, but their bank statements indicated more money than the cost of the item purchased had been charged to their bank account.

After receiving the customers' complaints, Shaw reviewed video of these transactions. She saw the claimant leave the cash register drawer open. The claimant wrote a receipt for one customer for the purchase because a receipt is only printed with the cash register drawer is closed. Shaw then observed the claimant scan some lottery tickets and scratch them to see if

she had won anything. The employer concluded the claimant charged customers for cash that she did not give them and then used that money to buy lottery tickets while she worked.

On January 2, 2014, the employer discharged the claimant. The claimant understood she was discharged because she did not tell the manager she had switched a shift with another employee. The employer discharged her for charging customers too much on their debit card and then using a customer's money to buy herself lottery tickets at work.

The claimant established a claim for benefits during the week of January 5, 2014. She filed claims for the weeks ending January 11 through March 8, 2014. She received her maximum weekly benefit amount of \$129.00 for each week. The employer did not know if anyone on the employer's behalf participated in the fact-finding interview.

### **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. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

After the employer received complaints from customers about the charges on their debit cards, Shaw reviewed the video of these transactions. Based on the video tape, Shaw concluded the claimant intentionally overcharged customers to buy lottery tickets while she worked. The employer's policy prohibits employees from buying lottery tickets while working and also informs employees they are not to purchase lottery tickets at the location where they work. The evidence establishes that the claimant intentionally violated the employer's policy and interests. The employer discharged her for reasons constituting work-connected misconduct. As of January 5, 2014, the claimant is not qualified to receive benefits.

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.

Based on this decision the claimant has been overpaid \$1,161.00 in benefits she received for the weeks ending January 11 through March 8, 2014. Since the employer's witness did not know if the employer participated at the fact-finding interview, the issues of whether the

employer participated at the fact-finding interview and if the claimant is required to pay back the overpayment or the employer is charged for the overpayment will be remanded to the Benefits Bureau to determine.

**DECISION:**

The representative's January 30, 2014 determination (reference 02) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of January 5, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The claimant has been overpaid \$1,161.00 in benefits she received for the weeks ending January 11 through March 8, 2014.

The issues of whether the employer participated at the fact-finding interview and whether the claimant must pay back the overpayment of benefits or the whether the employer will be charged for the overpayment are **Remanded** to the Benefits Bureau to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css