

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BERNADETTE J FULMER
Claimant

APPEAL NO. 11A-UI-14073-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 10/02/11
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 24, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 21, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Mary Eggenburg participated in the hearing on behalf of the employer with a witness, Doug Vance. Exhibit One, Two, and Three were admitted into evidence.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time as a compliance supervisor for the employer from October 29, 1994, to September 8, 2011.

The employer terminated the claimant's employment on September 7, 2011, after she admitted in writing on September 2 that she had stolen \$500 in cash from her supervisor and later returned the money, during an investigation of the matter. The employer allowed the claimant to resign in lieu of being discharged, and she resigned on September 8, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

Iowa Code § 96.5-2-b and c provide that a claimant who loses employment as a result of a work-connected act constituting an indictable offense shall have all wages credits canceled that were earned prior to the date of discharge. Theft of up to \$500 is considered a serious misdemeanor, which is an indictable offense under Iowa law.

Gross misconduct, however, was not an issue noticed for the hearing. The matter of whether the claimant should be subject to a gross misconduct disqualification is remanded to the agency.

DECISION:

The unemployment insurance decision dated October 24, 2011, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of whether the claimant should be subject to a gross misconduct disqualification is remanded to the agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw