

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN M DOLS

Claimant

APPEAL NO. 11A-UI-04367-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INDIANOLA PIZZA RANCH INC

Employer

OC: 02/27/11

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct

Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Indianola Pizza Ranch, Inc. filed an appeal from a representative's decision dated March 24, 2011, reference 01, which held that no disqualification would be imposed regarding Shawn Dols' separation from employment. After due notice was issued, a hearing was held by telephone on April 27, 2011. The employer participated by Troy Knight, Owner. Exhibits One through Nine were admitted on the employer's behalf. Mr. Dols did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Dols was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Dols was employed by Indianola Pizza Ranch, Inc. from February 27, 2010 until January 26, 2011. He was last employed full time as an assistant manager. He was discharged after receiving a series of warnings about his job performance.

Mr. Dols received a verbal warning after he failed to show up for a scheduled shift on May 23. He also became general manager in May of 2010 and there were no further incidents of him failing to appear for work. Because of deficiencies in his performance as general manager, the employer placed him on an action plan on August 28, 2010. The plan set forth those items that needed immediate action and those that were set as goals for 30-day and 60-day timeframes. As of November 3, he had not implemented a deep-cleaning schedule or held an employee meeting that was required within 30 days of August 28. Because of continuing problems with his performance, Mr. Dols was demoted to assistant manager as of December 27. He was advised at that time that he would be terminated if he did not complete his duties in a timely manner.

Mr. Dols received a written warning on or about January 12 because he failed to properly count down the registers at the end of his shift on January 2 and failed to count down the registers at

midday on January 12. He received another written warning after the restaurant ran out of product during the week of January 17. Mr. Dols was in charge of inventory but was not conducting the inventory in the manner required. The restaurant received two deliveries each week from the food distributor. Mr. Dols was responsible for entering the details of the deliveries into the computer. On the first day of each month, he was to conduct a "hands-on" count of product on hand. He was not performing the "hands-on" count as required and, at one point in December, falsified the figures he submitted regarding the inventory.

On January 6, Mr. Dols failed to clock out for his break as required and received a verbal warning. There was no evidence that he failed to clock out on other occasions. He received a written warning on January 23 because he was late due to oversleeping. The employer did not present evidence of other occasions on which he was late for work. There were no other disciplinary notices regarding attendance.

The decision to discharge Mr. Dols was prompted by the fact that the restaurant ran out of product again on January 23. He was notified of his discharge on January 26. He filed a claim for job insurance benefits effective February 27, 2011. He has received a total of \$2,920.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, it is concluded that disqualifying misconduct has been established. Mr. Dols knew in August that he was not meeting the employer's expectations regarding his job performance. He failed to comply with the requirement of the action plan of August 28. As a result of his failures, he was demoted from general manager to assistant manager in December. He was clearly on notice at this point that his continued employment was in jeopardy.

In spite of the December warning and demotion, Mr. Dols still failed to comply with the employer's standards. There were two occasions in January where he failed to count down the registers. If the registers are not counted down, the employer is unable to discover discrepancies in a timely manner. There were also two occasions in January where the restaurant ran out of product because Mr. Dols was not managing the inventory in the manner prescribed by the employer. This failure cost the employer time and money as an employee would have to go out to purchase needed items at a retail outlet. An employer is hampered in its ability to serve customers if needed items are not in stock as expected.

Mr. Dols knew how to perform his duties; he simply failed to do so. In fact, he falsified inventory numbers in December rather than actually counting items in stock as required. Since he knew how to perform the required duties and had been warned about his failure to perform, the administrative law judge must conclude that he deliberately and intentionally failed to do his job properly. For the reasons stated herein, it is concluded that disqualifying misconduct has been established. Accordingly, benefits are denied.

Mr. Dols has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if

the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated March 24, 2011, reference 01, is hereby reversed. Mr. Dols was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Dols will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css