

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAWNTAE D HURT**  
Claimant

**APPEAL NO. 11A-UI-16227-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HIAWATHA INC**  
**DIARY QUEEN**  
Employer

**OC: 12/20/11**  
**Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Hiawatha, Inc. filed a timely appeal from a representative's decision dated December 14, 2011, reference 01, which allowed benefits without disqualification. After due notice, a hearing was scheduled for and held on January 23, 2012. The claimant participated. Participating as a witness for the claimant was Ms. Racheal Wood, the claimant's fiancée. The employer participated by Mr. Kinch Donithan, Company President and Mr. Kewon Davis, Manager.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Shawntae Hurt was employed by the captioned employer, doing business as Dairy Queen, from February 5, 2007 until November 17, 2011 when he was discharged from employment. Mr. Hurt held the position of full-time cook and was paid by the hour. His immediate supervisor was Kewon Davis.

The claimant was discharged after the employer reasonably concluded the claimant had been intentionally untruthful in answering questions about a counterfeit \$50.00 bill. On December 14, 2011 the employer discovered a counterfeit \$50.00 in one of its cash registers. All employees including Mr. Hurt were asked about whether they had handled a \$50.00 bill that day. All employees including Mr. Hurt denied doing so. Subsequently a review of company surveillance cameras showed that Mr. Hurt had placed the \$50.00 bill from his wallet into the cash drawer and taken \$50.00 in twenties and ten dollar bills in exchange for the counterfeit \$50.00 bill. The claimant had done this when the manager was busy with other duties.

The employer again inquired directly to Mr. Hurt as to whether he had held or taken in a \$50.00 bill on the day in question. Mr. Hurt answered in the negative. After being shown the video

depictions on the security system, Mr. Hurt then “recalled” taking the \$50.00 bill out of his wallet and exchanging it for cash on the day in question. Mr. Hurt was given the option of making restitution. Facing criminal charges the claimant repaid the \$50.00 after being discharged from the company.

It is the claimant’s position that he “forgot” the incident and therefore did not recall it although he had been repeatedly asked about it.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes sufficient misconduct to warrant the denial of unemployment insurance benefits. It does.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that the employer placed great emphasis on an inquiry about how a counterfeit \$50.00 bill had been taken into the company’s cash register on

November 14, 2011. Although the claimant had been repeatedly questioned about the manner, in each instance he had denied knowing anything about a \$50.00 bill and denied handling a \$50.00 that day. Subsequently security camera clearly showed that the claimant had been the party that placed the counterfeit \$50.00 into the company's cash register and that Mr. Hurt had taken \$50.00 in change in exchange for the counterfeit bill.

The administrative law judge concludes based upon the totality of the evidence in the record that Mr. Hurt's testimony that he "forgot" the transaction strains credibility. The administrative law judge concludes based upon the evidence in the hearing that Mr. Hurt intentionally provided inaccurate information to the employer regarding the \$50.00 and how it was placed into the company's register. The claimant's conduct showed a willful disregard for the employer's interests and standards of behavior and thus was disqualifying under the provisions of the Iowa Employment Security Law. Benefits are withheld.

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.

**DECISION:**

The representative's decision dated December 14, 2011, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount,

and is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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