

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARI L GAST
Claimant

APPEAL NO. 11A-UI-06507-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES**
Employer

**OC: 04-10-11
Claimant: Respondent (2R)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 5, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 13, 2011. The claimant did participate. The employer did participate through Sherri Oelschlager, Area Supervisor. Employer's Exhibit One was entered and received into the record.

ISSUES:

Was the claimant discharged due to job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a manager full time beginning July 24, 2007 through April 13, 2011 when she was discharged. From April 2010 through March 2011 the claimant was responsible for the money the store received from the can redemption center. She had been trained by her previous supervisor that when she received a check from the redemption center she was to send it to the proper person at the corporate office. If she received cash from the redemption center then she was to enter it into the cash register and it would eventually be deposited in the bank. The claimant's prior supervisor also trained two other store managers who worked at different stores on the proper way to handle the money received from the can redemption center. From April 2010 through March 2011 the claimant was responsible for handling the cash or check from the redemption center. During that entire period she never entered any transactions into the cash register indicating she had received money from the redemption center nor did she ever send the corporate accounting office any checks she received from the redemption center. At no time during that period did she ask her supervisor, Sherri Oelschlager, for help or instructions on how to handle the money or checks she received from the redemption center.

In late March 2011 the claimant's assistant manager gave her some money she had received from the redemption center for returned cans. The assistant manager asked the claimant how the money was handled and the claimant told her not to worry about it. The assistant manager watched the claimant stick the money in an envelope on the shelf in the office. When the claimant left for the day, the assistant manager looked on the shelf for the envelope with the money in it but was unable to locate it. The claimant admits she never put cash from the redemption center into the store safe. The claimant's handling of the cash and checks from the redemption center violated the employer cash handling procedures. When the assistant manager could not find the money and the claimant would not tell her how the redemption center checks and cash were handled, she notified Ms. Oelschlager that she thought something was wrong. Ms. Oelschlager immediately spoke to the claimant about the situation on April 13. The claimant told Ms. Oelschlager that she had some money in her wallet in her other purse that was from the redemption center. When Ms. Oelschlager asked the claimant why she had the money in her purse, the claimant told her she had been meaning to ask what to do with the redemption center cash and checks. According to the records pulled from the cash register for can payouts from April 2010 through March 2011 the claimant should have deposited checks and cash to total \$162.10. She gave the employer \$53.00 at one time and another \$42.00 at a later date. The claimant did not have all the money she should have received from the redemption center and never returned to the employer all the money they should have received from the redemption center.

The claimant has received unemployment benefits after the separation on a claim with an effective date of May 5, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The administrative law judge is persuaded that the claimant had been properly trained on how to handle cash for the employer. As the manager it was the claimant's responsibility to insure that the employer cash was protected. Putting cash on a shelf in the office or worse, in her own wallet in her purse and taking it from the store was a clear violation of the employer's cash handling policies. The claimant had ample opportunity to ask for additional training if she did not know how to handle the cash, but did not do so. The claimant never returned to the employer all of the cash she should have had in her possession from the redemption center. The claimant's actions amount to substantial misconduct and are sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

Iowa Code § 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits.

DECISION:

The May 5, 2011 (reference 01) decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

REMAND: The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css