

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DONNA L HANKINS
Claimant

TA OPERATING LLC
Employer

APPEAL 15A-UI-01315-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/07/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 26, 2015 (reference 04) unemployment insurance decision that denied benefits based upon the claimant's separation. The parties were properly notified about the hearing. A telephone hearing was held on February 26, 2015. The claimant participated. The employer participated through Deniece Newman of Employer's Edge. Witnesses were Colleen Moore, Teresa Blanton, and Marilyn Fender. Employer's Exhibits One through Three were admitted.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part time as a customer service representative and was separated from employment on December 27, 2014 when she was discharged.

The employer has an over/short policy for cash handling that provides any cashier whose drawer balances more than \$2.50 over or under, is subject to disciplinary action (Employer Exhibit Two). Over/shortages can occur at the end of the shift when an employee counts down their drawer or when they "drop" money. When a cashier's drawer reaches a certain level of cash, they are prompted to remove money from the drawer, place it in a locked bag, and "drop" it into a safe. The money is then retrieved and counted the following day by a bookkeeper. The claimant was made aware of the employer's cash handling policy through her e-learning course in July 2014 as well as when she received a warning on December 20, 2014 after a \$5.21 overage (Employer Exhibit Three).

Between the claimant's shifts on December 20, 23, and 24, she made four drops over her shifts and recorded in the employer's logs that each of the drops were for \$200 (Employer Exhibit One). Each of the four drop bags contained only \$180. The bookkeeper on location reviewed the bag and checked the claimant's drawer to explore all possibilities and could not locate the \$20 missing in each of the four drops, resulting in an \$80 loss to the employer.

The claimant's manager, Colleen Moore, also reviewed video footage of the bookkeepers to make sure they performed the drop retrieval correctly. The \$80 missing from the drop bags was never recovered and the claimant was subsequently discharged for her four shortages in three shifts.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

While claimant may have intended to drop \$200 in the bag, her repeated failure to verify the amounts or locate the missing money after having been warned on December 20, 2014 is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The January 26, 2015 (reference 04) decision is affirmed. 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

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