

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA A HARTMAN
Claimant

APPEAL NO. 11A-UI-05985-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTAR FOODS INC
Employer

OC: 04/03/11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's April 26, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. John Kelchen, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in April 1999. She worked as a full-time restaurant manager. Kelchen supervised the claimant.

The employer's cash control procedure requires employees at the end of the day to count the money in the cash register drawer and close out the register, which in turn indicates how much money should be in the drawer. The amount of money in the cash register drawer is recorded on a cash control sheet. The bag containing the money is then locked up. The next morning, a manager is supposed to count the money in each bag and verify the amount of money counted is the same amount that was noted on the bag or on the cash control sheet. After each individual bag has been counted and verified, the money from all bags is combined and counted. An employee can verify the total amount there should be by adding the amounts on the cash control sheets. If there is \$20 discrepancy in the cash counted when compared to the amount noted on the cash control sheet or cash bag, the manager is supposed to contact Kelchen.

In November or December 2010, the claimant reported to Kelchen that she suspected one of her shift leaders was taking money. The employer allowed this shift leader to continue counting and depositing the money. The week of March 14, the restaurant had some remodeling work

done and the cash registers did not work correctly. For this week, at the end of the day the cash registers would not generate a report showing how much money should be in the register.

On March 18, the claimant did not count each individual bag of money after they were removed from the safe. She was busy and opened up a couple of bags to make change for the cash register drawers up front. Instead of counting each individual bag, she combined all the money together and counted it. She did not look at the cash control sheet to see if the amount she counted was the same as what had been reported the night before. While the claimant deposited all the money that was in the bags, there was \$316 discrepancy. The cash control sheet indicated the total should be just over \$2100 and the claimant had just over \$1800 in the eight bags of money. When the claimant counted the money and deposited it, she did not realize there was a shortage. The claimant relied on the totals from the cash register when checking her money, and she did not have this available to her that day.

On March 22, Kelchen learned there were shortages on March 10, 12, 18, and 20. These daily shortages ranged from \$85 to \$403. The first time the claimant knew there was a discrepancy in the amount deposited compared to the cash control sheet was April 1. When the claimant reviewed the cash control sheet to the deposits made for those days, she acknowledged there were shortages. On April 4, the employer discharged the claimant because she failed to follow the employer's cash handling procedures and did not contact Kelchen when there was more than a \$20 discrepancy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

As the restaurant manager, the claimant was responsible for everyone she supervised. Since the claimant knew the cash registers were not printing out the amount of cash that should be in a drawer, she should have been very careful to make sure the amount noted in each individual bag was counted and verified against the cash control sheet. The evidence indicates the claimant's job was not in jeopardy before March 22. During the week of March 14, the claimant's store was being remodeled and she had problems with the cash registers providing needed information. While the claimant may or may not have been involved in counting the

money on March 10 and 12, she did not count or deposit the money on March 20. The claimant acknowledges she was involved in the March 18 deposit that was short \$316.

The claimant did not contact Kelchen about the shortages because she did not realize the deposits were short until April 1. The claimant did not follow the cash handling procedure because she did not count each individual bag of money. Instead, she was busy and trying to get the restaurant ready for business. While the claimant should have taken extra, precautionary steps during the remodeling, her failure to do so amounts to carelessness or negligence. She was not, repeatedly negligent or careless. Therefore, the facts do not establish that she committed work-connected misconduct. As of April 3, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's April 26, 2011 determination (reference 01) is affirmed. The employer established justifiable business reasons for discharging the claimant. These reasons do not constitute work-connected misconduct. As of April 3, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw