

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES M OSWALT
Claimant

APPEAL NO: 12A-UI-09455-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PERKINS & MARIE CALLENDER'S LLC
Employer

OC: 06/24/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 31, 2012, reference 01, that held he was discharged for misconduct on June 1, 2012, and which denied benefits. A telephone hearing was held on August 29, 2012. The claimant participated. Greg Tilghman, general manager, and Cheryl Rodermund, representative, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a full-time cook on April 8, 2011, and last worked for the employer on June 1, 2012. The store manager paid server Ashley her \$50 tip money on June 1. Ashley laid the money down to handle some dishes and was interrupted by customer. When she returned, the money was gone.

The GM watched a security video of the area where the money disappeared. It showed claimant looking around and then putting the money in his pocket. When confronted by the GM, claimant admitted taking the money but said it was a joke. He later told the GM he found \$20 outside the restaurant that must have been part of the missing money. When the GM questioned the server (Ashley), she denied claimant gave her the money. The employer has a zero tolerance policy for theft and it discharged claimant.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on June 1, 2012, for theft.

The employer offered credible testimony that claimant committed an act of theft by taking the server's money. Claimant admits he took the money and offers a not credible motive for doing so. It is not credible that the server would tell the GM claimant did not return money just to get him fired. Theft of property constitutes job-disqualifying misconduct.

DECISION:

The department decision dated July 31, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on June 1, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw