

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY K PATRICK
Claimant

APPEAL NO. 08A-UI-04576-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CIGARETTE OUTLET INC
Employer

**OC: 04/13/08 R: 04
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Kimberly Patrick, filed an appeal from a decision dated May 2, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on May 28, 2008. The claimant participated on her own behalf. The employer, Cigarette Outlet, participated by Supervisor Debbie Schnyder.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Kimberly Patrick was employed by Cigarette Outlet from March 29, 2007 until April 11, 2008. At the time of separation she was the full-time store manager. She had received a final written warning in November 2007, from Supervisor Debbie Schnyder about cash shortages. The warning notified her that her job would be in jeopardy if there were any substantial cash shortages in the future.

The employer does not customarily concern itself with shortages of \$20.00 or less. However, shortages higher than that result in audits to determine the cause. The claimant's store did have further shortages but these were either the result of paperwork errors which caused the shortage to be rectified, or else were discrepancies which could not be firmly attributed to a particular person.

On Sunday, April 6, 2008, the claimant was working and, at the end of her shift, she left her keys in the store safe. She did not count the money in the safe the next day when she came to work. But on Tuesday, April 8, 2008, she notified Assistant Supervisor Betsey, that the safe was \$100.00 short. Ms. Schnyder was notified and a review was done of the claimant's store and no paperwork errors could be detected to explain the \$100.00 shortage in the safe. Ms. Patrick's personnel file was also reviewed and on the basis of the prior written warning she was discharged by the supervisor on April 11, 2008.

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.

It is not known for certain whether the missing \$100.00 was taken directly from the store safe. Since the claimant did not count the safe on the day after she left her keys there, the administrative law judge may reasonably conclude her negligence in not securing the company assets, and leaving her keys where they could be used by anyone to open the safe, contributed substantially to the loss of the money. Her failure to keep the keys secure; and thereby giving access to the safe to others, is a violation of the duties and responsibilities the employer has the right to expect of an employee. It is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of May 2, 2008, reference 01, is affirmed. Kimberly Patrick is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs