

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIELLE HASSOLD**  
Claimant

**APPEAL NO: 11A-UI-14315-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ENTERPRISE RENT-A-CAR COMPANY**  
Employer

**OC: 10/02/11**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Enterprise Rent-A-Car Company (employer) appealed an unemployment insurance decision dated October 24, 2011, reference 01, which held that Danielle Hassold (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 29, 2011. The employer participated through Ryan Peyton, area rental manager, and Tara Debartolo, branch manager. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant submitted a written statement in lieu of participation. She did not indicate why she was not participating, did not request a postponement, and did not contact the administrative law judge prior to the hearing. Iowa Workforce did mail a copy of the statement to the employer representative since documents can only be considered when all parties have copies. However, the employer witnesses testified they did not have a copy of the statement, so it could not be admitted into evidence and was not considered.

The claimant was hired as a full-time assistant manager hired as management trainee on May 19, 2010 but was working as an assistant manager on October 5, 2011, when she was discharged for theft and dishonesty. A customer from Drake University returned a car on the evening of September 4, 2011 and put the keys in the drop box. He realized he left his wallet, some gold coins, and some reimbursement receipts in the vehicle and unsuccessfully tried to get a hold of the person who rented him the vehicle. When he was able to get a hold of the

employer on September 6, 2011, the van had already been rented out again. His wallet had been found, but the gold coins and the receipts were missing. The claimant came in to clean vehicles on Labor Day, September 5, 2011 and she was the individual who cleaned the van. She denied seeing any gold coins.

Area Rental Manager Ryan Peyton met a new branch manager at the Merle Hay Store on approximately September 11, 2011 around 7:00 p.m. to show him around. At 8:00 p.m., a 2011 Chevy Malibu was returned and the key was put in the drop box but no one came into the store. Mr. Peyton looked at the contract and saw that the claimant had rented this vehicle on the previous Friday. He took the contract and went out to check in the car and saw that the gas tank was empty even though it went out with a full tank. Mr. Peyton stopped the charges so that he could ask the claimant about it on the following day. When the claimant was questioned about it, she said her boyfriend returned the vehicle and said that it was empty when she rented it but was mismarked on the contract. The claimant went into a long story about how she had to go get gas and the employer accepted her explanation.

On September 29, 2011, the employer received a call from the customer who returned the vehicle on September 4, 2011 with property still in the car. The customer brought up the claimant's name in the telephone call and she denied the theft. The area manager gave the customer \$150.00 in rental credits, which was the amount of his loss, but he began to reconsider the claimant's credibility. The manager conducted a further investigation on September 30, 2011 regarding the claimant's car rental contract. He contacted the customer who had rented the same car the claimant rented before she rented it. Mr. Peyton asked the customer whether he filled up the tank when he returned the car and the customer said he did and had a gas receipt that proved he put in approximately 13 gallons.

Mr. Peyton called the claimant, who had transferred out to the airport location, and asked her about it. He explained the customer had proof that he filled up the tank before returning the car and asked the claimant for proof of her gas purchase. The claimant said she paid for it with cash and would not risk her job over a tank of gas. Mr. Peyton advised the claimant that he had to open up a full investigation because what a customer had said compared with what the claimant had said. The claimant was silent for a moment and then admitted she did not fill the tank with gas since it was already full. She asked Mr. Peyton what she had to do to make it right so that it was not reported and he advised her there was no option of not reporting it.

The claimant filed a claim for unemployment insurance benefits effective October 2, 2011 and has received benefits after the separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 claimant was discharged on October 5, 2011 for theft and dishonesty. She falsely claimed to the employer that she had to put fuel in a car that she rented; she claimed the contract was wrong and then went into a long explanation of what happened. The claimant never came forward to provide the truth from the initial date she was questioned to the second date she was questioned on September 30, 2011, when she again provided false information about filling the gas tank. It was only after the employer advised her that a complete investigation was going to be conducted that she admitted the truth and admitted she had lied. The claimant's actions were not a one-time lapse of judgment but instead were an intentional and repeated choice to provide false information when questioned by the employer. The claimant's theft of a tank of gas shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development

determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated October 24, 2011, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw