

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

INEZ M RAMMELBERG

Claimant

APPEAL NO. 06A-UI-11227-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALBERT AUTO SERVICES

Employer

**OC: 10/15/06 R: 03
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Albert Auto Services (employer) appealed a representative's November 15, 2006 decision (reference 01) that concluded Inez Rammelsberg (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 7, 2006. The claimant participated personally. The employer participated by Joyce Albert, President, and Steve Albert, Vice President.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 15, 2003 as a full-time secretary. The employer has approximately \$10,000.00 in cash missing from the business. It has been trying to determine the source of the problem. The bank agreed to open each deposit envelope under a camera.

On October 16, 2006, a co-worker gave the claimant a deposit envelope with checks and \$460.00 in cash. The claimant put the envelope in her purse, took it home and placed it in a common area of the house. Six people lived in the claimant's house and various other people were also in the house that day.

On October 17, 2006, the claimant deposited the envelope at the bank. There was no cash in the envelope. The employer filed a report with the police. Law enforcement investigated and filed a charge of fourth degree theft against the claimant. Determination of the criminal matter is pending. The claimant was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. 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 Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). The claimant clearly disregarded the employer's interests by leaving the employer's assets within access of any number of people. Her failure to secure the employer's assets is an intentional action. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct. Should the outcome of the criminal trial be favorable to the employer, the employer has the right to request that the matter be reopened so that gross misconduct might be determined.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits in the amount of \$1,500.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's November 15, 2006 decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,500.00. Should the outcome of the criminal trial be favorable to the employer, the employer has the right to request that the matter be reopened so that gross misconduct might be determined.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css