

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILMA D PEARSON**  
Claimant

**APPEAL NO. 09A-UI-10975-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEAVER ENTERPRISES LTD**  
Employer

**Original Claim: 06/28/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated July 24, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 18, 2009. The claimant participated. The claimant was represented by Derek Johnson, attorney at law. The employer participated by Charles Vandenberg, area coach. The record consists of the testimony of Wilma Pearson and the testimony of Charles Vandenberg.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case operates a number of restaurants, including a KFC where the claimant worked. She was initially hired on October 28, 1995, and at the time of her termination she was a second assistant manager. She would be assigned both to open and close the restaurant.

On June 27, 2009, there was a shortage of \$65.00 at the end of the shift. The employer had a policy that any shortage over \$10.00 was to be reported to the area coach—Charles Vandenberg. The claimant thought Mr. Vandenberg was on vacation. She was given that information by the manager—Robin Stivers. When the claimant discovered the shortage, she did not, therefore, attempt to contact Mr. Vandenberg. She did call Robin Stivers, but Ms. Stivers' phone did not accept messages. The claimant made a diligent effort to resolve the cash shortage and she found that it was largely due to a register that had been operated by a single employee. She intended to tell Robin about the shortage the next day.

The claimant was scheduled to open on June 28, 2009. Mr. Vandenberg came to the restaurant, which surprised the claimant, since she had thought he was on vacation. He made

the decision to terminate the claimant based on her violation of the policy to report any cash shortage over \$10.00. In addition, he was investigating a complaint from another employee that the claimant had flicked water on her. That investigation, however, was not complete. The complaint against the claimant was made on June 27, 2009.

### **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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Iowa law states that misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The definition of misconduct in 871 IAC 24.32(1) excludes good-faith errors in judgment or discretion. Isolated examples of negligence are also not considered misconduct. The employer has the burden of proof to show misconduct.

The evidence in this case does not establish misconduct. The claimant was terminated because a cash shortage of \$65.00 had not been reported the night before to Mr. Vandenberg. The claimant did not call him because she thought he was on vacation. She did try to call her manager and was unable to leave a message. There is no evidence that the claimant was personally responsible for creating the shortage. The claimant testified that she made every effort to determine where and how the shortage occurred and could not find an answer. The claimant may have used poor judgment in not calling another member of the management

team. But, this isolated example of poor judgment is not misconduct under unemployment insurance law.

Part of the reason for the claimant's termination was due to a complaint that she flicked water in another employee's face. The claimant denied having done this; and even if it occurred, this flicking was accidental. The employer had not even finished the investigation on this issue. Given the claimant's denial, the employer was obligated to furnish evidence that this incident occurred and was something more than an accidental event. That evidence was not presented at the hearing.

As the employer has failed to show misconduct, the claimant is entitled to benefits if she is otherwise eligible.

**DECISION:**

The representative's decision dated July 24, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw