

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN M COURTNEY

Claimant

APPEAL NO: 14A-UI-04826-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC

Employer

OC: 04/06/14

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated April 30, 2014, reference 01, that held the claimant was not discharged for misconduct on April 8, 2014, and benefits are allowed. A telephone hearing was held on May 29, 2014. The claimant participated. Sam Ray, GM, 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 witness testimony and having considered the evidence in the record, finds: The claimant was hired on March 25, 2009, and last worked for the employer as a part-time cashier on April 7, 2014. Claimant has some physical disability issue and the employer made accommodation.

Employer issued claimant a final warning on March 17, 2014 for cash handling stating if it happened again she could be terminated. Claimant had a cash shortage of \$39.87 on April 4. During her work shift on April 7 she was issued a final written warning. Team shift leader Cammi handed the warning to claimant who signed for it. It states a further incident could mean employment termination.

At the end of claimant's April 7 work shift her drawer was short \$99.40. An effort to reconcile the shortage failed. Claimant asked shift leader Cammi if she was done and was told so. When claimant came in the next day, she confirmed with a different shift leader she had been terminated the night before.

GM Ray considered claimant had voluntarily quit for failing to report for work April 11, 12 and 15, as he is the person who has authority to hire and fire employees. Ray denies he told claimant she was terminated.

No employer representative personally participated at department fact finding. Thomas & Thorngren submitted an information sheet listing the dates claimant worked with an end date of March 18, and that she had voluntarily quit. The department fact finder records the employer representative would not otherwise participate.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on April 7, 2014.

Claimant was issued a final warning on March 18, 2014 and one on April 7 during her last work shift. When she learned she had almost a one-hundred dollar cash shortage that day, she had reason to believe she would be terminated this time. While shift leaders might not have the authority to terminate an employee, they gave claimant every reason to believe she was when claimant asked if she was done.

The GM could have checked with the shift leaders and if what claimant offered in this hearing was untrue, offered them as witnesses in this matter. Claimant gave no notice she was quitting

nor did she express any intent she was quitting. Since the employer treated the employment separation as a voluntary quit, it did not consider what claimant had done was job disqualifying misconduct.

DECISION:

The department decision dated April 30, 2014, reference 01, is affirmed. The claimant was not discharged for misconduct on April 7, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css