

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN G FLATEN**

Claimant

**APPEAL NO. 07A-UI-03291-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VILLAGE INN/BAKERS SQUARE**

Employer

**OC: 03/04/07 R: 02  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Village Inn filed an appeal from a representative's decision dated March 22, 2007, reference 01, which held that no disqualification would be imposed regarding Kevin Flaten's separation from employment. After due notice was issued, a hearing was held by telephone on April 17, 2007. Mr. Flaten participated personally. The employer participated by Emin Yilmaz, General Manager, and was represented by Elizabeth Svehlek of TALX Corporation. Exhibits One through Four were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Flaten was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Flaten was employed by Village Inn from June 17, 2005 until February 25, 2007. He was always employed full time as an assistant manager. His discharge was prompted by his violation of the employer's standards.

On February 20, 2007, Mr. Flaten rang up several pies for one customer for a total of \$111.59. He rang up the pies using a register in the back of the restaurant and used a server's name to ring them up. The pies should have been rung from the point-of-sale register at the front of the restaurant. When questioned by the employer about his actions, Mr. Flaten indicated he rang the pies at the back register in order to make his labor costs look good. By ringing the pies at the back register, he gave the impression that the \$111.59 was payment from seated customers rather than an individual coming in and just picking up pies. That way, the ratio of labor costs to sales looked better.

The matter came to the employer's attention on February 21 when the individual whose name Mr. Flaten rang the pies under complained. She indicated she had not given him permission to use her name to ring up the pies. Ten percent of her total sales would be attributed to her as income. The \$111.59 Mr. Flaten rang under her name increased her sales and, therefore, her income. The end result would be a potential increase in her tax liability.

The only warnings Mr. Flaten had received concerned a cash shortage of \$20.12 on July 9, 2006 and guest complaints on September 26, 2006. He was scheduled off on February 21 and 22. He was notified of his discharge on February 25, 2007.

Mr. Flaten filed a claim for job insurance benefits effective March 4, 2007. He has received a total of \$1,735.00 in benefits since filing his claim.

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

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Flaten's conduct of February 20, 2007 is sufficient, standing alone, to constitute disqualifying misconduct. He deliberately and intentionally took steps intended to mislead his employer concerning sales from guests. It was his duty as an assistant manager to make sure the records accurately reflected the restaurant's business. It appears that he was attempting to justify labor costs by including sales that are not used to determine labor costs. He was, in essence, attempting to deceive his employer into believing there were more seated customers in the restaurant than there actually were. Such deception is clearly contrary to the type of behavior an employer has the right to expect from a member of management.

Mr. Flaten rang the pies in question under the name of a server but did not have the server's permission to do so. He knew or should have known that attributing additional income to her might increase her tax liability. The fact that he offered to pay any tax liability the server might incur is immaterial. The fact remains that Mr. Flaten took steps that could adversely affect her financially without first checking with her.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has satisfied its burden of proving misconduct as that term is defined by law. Accordingly, benefits are denied. Mr. Flaten has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

#### **DECISION:**

The representative's decision dated March 22, 2007, reference 01, is hereby reversed. Mr. Flaten was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Flaten has been overpaid \$1,735.00 in job insurance benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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