

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LATRICE M BROWN**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 17A-UI-11692-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/22/17  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 7, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 5, 2017. The claimant participated personally and was represented by Philp Jensen, attorney at law. The employer participated through Lisa Haroff, hearing representative. Witnesses for the employer included Jim Carney, store manager, and Jackie Kuennen, human resources manager. Employer Exhibits 1 through 9 were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a customer service clerk/cashier beginning in 2007, and was separated from employment on October 18, 2017, when she was discharged for a cash handling error resulting in financial loss to the employer.

The claimant was a long term employee, who had no prior warnings for cash handling or cashiering prior to discharge. She was trained on employer policies with respect to handling money orders, pay bill orders, and cashing checks for customers. She routinely cashed checks as a primary job duty and even helped with training of new employees throughout her employment. The employer does not have a specific policy about cash handling or losses to the

employer, which notifies employees they are subject to discipline or termination. The employer has historically discharged employees who cause significant financial loss to the store, including a former co-worker of the claimant who mishandled a Western Union transaction over the phone.

The undisputed evidence is the claimant improperly handled a check cashing for a customer named Julius on October 13, 2017, which resulted in paying the customer \$1,999.00 in cash, instead of \$1,099.00 in cash, causing a \$900 loss to the employer. The employer discovered the shortage on October 14, 2017, and investigated the matter, including interviewing the claimant, before she was discharged on October 18, 2017. There is no allegation that the claimant personally gained from the transaction, that she knew the customer, or that she purposefully paid him too much money.

Rather, the credible evidence presented is that the claimant was aware that she could only cash checks up to \$1,999.00. The customer presented a valid check in the amount of \$1,125.00. The claimant reviewed the check to ensure it was under the permissible cashing amount and then verified the check name and address against his photo id. The claimant then imputed a \$26.00 cash checking fee, based upon the amount of the check, into the register, followed by the correct amount of the check. As a result of the fee, the customer was entitled to \$1,099.00. The claimant inadvertently withdrew \$1,999.00 and was observed through surveillance counting the amount twice before asking her manager, Kathy Burris, to count the money also. Ms. Burris did verify the claimant withdrew \$1,999.00 and counted it before handing it to the customer. The claimant does not know why she withdrew \$1,999.00 instead of \$1,099.00 but opined the amount of \$1,999.00 because it was the number designated as the limit for cash withdrawals. Upon investigation, she was discharged.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1071.00, since filing a claim with an effective date of October 22, 2017. The administrative record also establishes that the employer did participate in the November 6, 2017 fact-finding interview or make a witness with direct knowledge available for rebuttal. Jim Carney and Jackie Keunnen participated.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Cognizant of the significant loss the claimant's actions caused the store when she overpaid a customer \$900.00, the employer had business reasons for discharging the claimant. However, the evidence presented does not establish that the claimant intentionally disregarded the employer's interests. Rather the claimant followed each step of the employer's policy for cashing a valid check on October 13, 2017, for a customer named Julius. After deducting a cashing fee, the customer was entitled to be paid \$1,099.00 in cash. However, unbeknownst to the claimant, she inadvertently then withdrew \$1,999.00 in cash, thereby overpaying him \$900.00. Based upon the evidence presented, the administrative law judge concludes that the facts do not establish that the claimant intentionally mishandled the check/cash handling transaction or disregarded policy when she overpaid the customer money he was not entitled. Instead, she was negligent. It cannot be ignored that the claimant performed her job for ten years without a warning for any similar conduct. This isolated incident of negligence does not constitute work-connected misconduct.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

**DECISION:**

The November 7, 2017, (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld shall be paid, provided she is otherwise eligible. The claimant has not been overpaid benefits. The employer's account is not relieved of charges associated with the claim.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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