

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA D FISHER

Claimant

APPEAL NO: 06A-UI-09148-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK

Employer

**OC: 08-20-06 R: 03
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 8, 2006, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on September 27, 2006. Claimant participated. Employer participated through Sandra Renard. Employer's Exhibit 1 was received.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time teller from April 28, 2003 until August 19, 2006 when she was discharged. She worked August 8 and was not scheduled August 9 or 10 and called in sick on August 11. She reported a drawer balance with a \$1.25 shortage at the close of business on August 8, 2006. Since employer needed an extra cash drawer for another teller on August 11, it used claimant's cash drawer. In counting the drawer before use, Jason Hoeck and Katie Atkinson, rotating vault teller for August 11, found a \$180 shortage. Atkinson did not work on August 8. When confronted on August 12, claimant's response was, "Oh." Employer believed claimant used a prohibited practice of "forced balancing" where she entered into the computer information that her drawer balanced to a \$1.25 shortage when it was actually \$180.

The investigation continued into the next week and employer found it was common knowledge in that branch that claimant left her cash drawer key in a drawer with personal items where any rotating vault teller had access. Employer's policy required she keep the keys in her possession since she was assigned a specific key, worked on a regular basis and did not need to check out cash drawer keys on a daily basis. The vault teller has the key to a stack of three drawers and claimant used the top drawer for herself where rolled coins were also stored. At the end of the day the vault teller for that day (the assignment varies) who has dual control of key with another teller drops the key into the night drop and no one has access until two people arrive at work the

next morning to unlock the two combinations to the night drop and get the key out. Then the vault key is signed in for that day's vault teller and the two tellers use the key and one combination to open the vault where the cash boxes are kept with locked lids.

Employer counseled her on September 27, 2005 about cumulative shortages of \$79 to more than \$200 for the three-month period ending August 2005. On May 30, 2006, she was short \$150 and May 16 and on May 19 was short \$150.10.

The claimant has received unemployment benefits since filing a claim with an effective date of August 20, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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).

While claimant may not have taken the money, she did not secure her keys as she knew she was supposed to. Her negligence, after having been previously warned about shortages, rises to the level of disqualifying misconduct. Benefits are denied.

Iowa Code § 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The September 8, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and 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 \$1,175.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/cs