

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA J NORTON
Claimant

APPEAL NO. 07A-UI-00814-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FMC/MARC INC
ARBIES
Employer

OC: 12/10/06 R: 02
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Arbies, filed an appeal from a decision dated January 19, 2007, reference 01. The decision allowed benefits to the claimant, Laura Norton. After due notice was issued, a hearing was held by telephone conference call on February 7, 2007. The claimant participated on her own behalf and was represented by Iowa Legal Aid in the person of Sarah Stillwill. The employer participated by Unit Director Jamie Fiscus and was represented by TALX in the person of Ted Arndt. Exhibits One and Two were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Laura Norton was employed by Arbies from September 21, 2005 until December 2, 2006. She was a full-time assistant manager. On September 11, 2006, Unit Manager Jamie Fiscus and District Manager Penny Alden met with all of the managers to discuss cash shortages in the store. Everyone was notified that any “major” cash shortage, \$20.00 or more, would result immediate discharge. The claimant had received warnings on May 29 and 30, 2006, for cash shortages on four different occasions.

The claimant’s bank deposit was short \$20.00 on November 26, 2006. Ms. Fiscus consulted with Ms. Alden and they decided to give the claimant a “second chance” and issued a written warning, which was not presented to her until December 2, 2006.

On December 2, 2006, the claimant’s deposit from the night before was \$40.00 short. She was solely responsible for closing down the individual cash drawers, counting the money, making out the deposit slip and securing the money in the store safe. When the amount in the bank receipt did not match the amount on the deposit slip filled out by the claimant, the decision was made to discharged the claimant. She was notified by Ms. Fiscus later the same day.

Laura Norton has received unemployment benefits since filing a claim with an effective date of December 10, 2006.

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.

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).

There is no evidence the claimant was taking any of the money for which she was responsible. However, there is sufficient evidence she was not accounting for what money was being deposited. The past history of shortages, along with the managers meeting on September 11, 2006, showed there was a pattern of money not being carefully counted or documentation not being accurately completed. The final incident of a \$40.00 shortage was not a one-time mistake or error, but a final incident in a series of inaccuracies. This goes beyond carelessness to negligence of such a degree as to constitute willful misconduct. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 19, 2007, reference 01, is reversed. Laura Norton is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,036.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css