

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ERIC J FROST
1125 – 63RD ST
DES MOINES IA 50311-2132

CHECK INTO CASH OF IOWA INC
C/o THOMAS AND THORNGREN INC
PO BOX 280100
NASHVILLE TN 37228

Appeal Number: 06A-UI-01812-HT
OC: 01/08/06 R: 02
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Check Into Cash, filed an appeal from a decision dated February 1, 2006, reference 01. The decision allowed benefits to the claimant, Eric Frost. After due notice was issued a hearing was held by telephone conference call on March 2, 2006. The claimant participated on his own behalf. The employer participated by Regional Manager Jack Near.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Eric Frost was employed by Check Into Cash from May 1998 until January 5, 2006. At the time of separation he was a full-time district manager.

On December 8, 2005, Regional Manager Jack Near began investigating a cash shortage at one of the stores overseen by Mr. Frost. The claimant reported late in the evening on December 7 2005, the store was \$120.00 short and he was going to do an audit and examine the store surveillance video the next day. Around 3:00 p.m. on December 8, 2005, Mr. Near talked with the store manager and the customer service representative (CSR) about the matter. They both said Mr. Frost had told the CSR she would have to pay the money back out of her own pocket to make the books balance. This is a direct violation of the company policies.

Mr. Near had the two employees submit written statements to him. Around 5:00 p.m. he talked to the claimant for the usual evening report. Mr. Frost said the shortage had been resolved when a customer had brought the money back. He affirmed this later in the conversation and said he would issue a disciplinary action against the CSR. Still later the regional manager called the store manager back and she reported she had just gotten off the phone with Mr. Frost who had told her he had lied to Mr. Near and would be in trouble if his story was not confirmed.

On December 13, 2005, Mr. Near discovered from another district manager that an employee in a Des Moines, Iowa, store had been told by Mr. Frost she had to pay a shortage out of her own pocket or "get another job." Around 12:30 a.m. on December 14, 2005, the claimant called Mr. Near and the employer believed from his slurred speech and disjointed comments that Mr. Frost was drunk. The claimant apologized and admitted he had lied about the shortage being resolved, and finally the regional manager told him they would talk later that morning.

At the next conversation the claimant again apologized and admitted he had lied. Mr. Near said he had trouble working with someone who was dishonest. The regional manager talked with the regional vice president and it was decided to give the claimant the option of being discharged immediately or else giving a resignation to be effective February 1, 2006. This consideration was given because of Mr. Frost's long tenure with the company. The claimant elected to sign the resignation.

Mr. Near outlined his expectations to Mr. Frost for the remaining period of his employment, acknowledging he would be doing interviews for new jobs but he must always notify the regional manager so the claimant's responsibilities could be covered while he was occupied elsewhere. On December 30, 2005, Mr. Near could not reach the claimant on his company cell phone and the claimant did not respond to any of the message to call back, in spite of four messages being left. When confronted the next day the claimant admitted he had forgotten to notify his superior of his absence to do an interview.

On January 5, 2006, Mr. Near attempted four times to call the claimant, leaving messages, but got no return call. The last call was made at 3:00 p.m. and when there was no return call, the regional manager discussed the matter with the vice president and the decision was made to discharge the claimant for failing to keep in contact with his supervisor. Mr. Near left a message on the claimant's phone round 5:30 p.m. notifying him he had been discharged.

The claimant stated he was in his office during the day of January 5, 2006, doing employee evaluations. That is where he was scheduled to be but he does not get good cell phone reception there. He did not check his messages until after 5:00 p.m. when the usual call from Mr. Near is made for a report of the daily activities. One of the message on his cell phone was a notice from the regional manager he had been fired.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified.

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).

The claimant was given the option of being discharged on December 14, 2005, or being allowed to resign with a separation date of February 1, 2006. This is not a voluntary separation but a discharge for misconduct, with notice. The claimant has acknowledged knowingly violating company rules on at least two occasions when he demanded employees to make up shortages out of their own pockets. In addition, he lied to his supervisor about the matter. This is conduct not in the best interests of the employer and the claimant is disqualified as a result of those actions.

However, the claimant was discharged prior to the agreed date because his supervisor did not feel Mr. Frost was keeping in contact with his supervisor as required. The employer did not rebut the claimant's assertion he was in his office doing regular job duties. Mr. Near did not

indicate why he did not check the schedule to see where the claimant was supposed to be, or why he did not try calling the office. In either case, the claimant cannot be held responsible for the fact his cell phone does not get good reception in the office.

The administrative law judge considers the premature discharge of the claimant, prior to the agreed upon date of February 1, 2006, must be for a current act of misconduct. None has been established as required by 871 IAC 24.32(8). Nonetheless, the administrative law judge considers the premature discharge to be similar to the provisions of 871 IAC 24.25(38) where a discharge which occurs prior to the proposed date of resignation entitled the claimant to benefits for the period between the discharge and the proposed date of resignation.

The claimant would be entitled to receive benefits from the effective date of the claim on January 8, 2006 through the week ending January 28, 2006.

DECISION:

The representative's decision of February 1, 2006, reference 01, is modified in favor of the appellant. Eric Frost is qualified for benefits from January 8 through January 28, 2006. Effective January 29, 2006, he is disqualified until he earns ten times his weekly benefit amount from other insured work, provided he is otherwise eligible.

bgh/tjc