

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA M BOWERS**

Claimant

**APPEAL NO. 06A-UI-11840-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**G O T OUTDOORS LLC**

Employer

**OC: 05-14-06 R: 03  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 1, 2006, reference 09, decision that allowed benefits. After due notice was issued, a hearing was held on December 28, 2006. The claimant did not participate. The employer did participate through (representative) Cindy Squires, Office Manager, Kiana Eby, Cashier, and Melissa Williams, Cashier. Employer's Exhibit One was received.

**ISSUE:**

Was the claimant discharged for work-related misconduct? Has the claimant been overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a cashier part-time beginning September 12, 2006 through October 24, 2006 when she was discharged.

The claimant rang up but did not pay for hunting, habitat fee, and bow hunting tags or licenses for her husband. She entered the information to obtain the tags and license into the store's computer system on September 22 and October 2, 2006. The hunting tags and licenses were obtained for her husband Shane Bowers. When initially questioned about when and how she had paid for the licenses and tags the claimant indicated that she had given payment to another cashier Kiana Eby. Ms. Eby did not work at the store on the day claimant alleges she rang up the sale of the tags. The claimant then indicated that she had rung up the transaction herself. The claimant was not allowed to ring up her own purchase and she had been trained not to do so by Ms. Eby. Ms. Williams saw the claimant put a deer tag in her purse with the carbon copy still attached to it, precipitating the employer's investigation. The employer's records indicate that the claimant did not pay for the licenses and tags until after she had been discharged on October 24. The claimant returned to the store on October 26 and paid the \$104.00 fee due to the employer for the hunting licenses and tags.

The claimant has received unemployment benefits since her discharge.

### **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 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 took hunting tags and licenses from the employer in the amount of \$104.00 without paying for them. Her theft constitutes disqualifying misconduct. Benefits are denied.

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.

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 December 1, 2006, reference 09, 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 \$126.00.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs