

**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**

**ROBIN L SPILLER
2825 ELAINE DR NW
CEDAR RAPIDS IA 52405**

**TM1 STOP LLC
1 QUAIL CREEK CIR
NORTH LIBERTY IA 52317**

**Appeal Number: 04A-UI-09460-CT
OC: 08/08/04 R: 03
Claimant: Respondent (2)**

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 for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

TM1 Stop filed an appeal from a representative's decision dated August 26, 2004, reference 01, which held that no disqualification would be imposed regarding Robin Spiller's separation from employment. After due notice was issued, a hearing was held by telephone on September 27, 2004. The employer participated by John Burchert, Chief Operating Officer. Exhibit One was admitted on the employer's behalf. Ms. Spiller responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Spiller was employed by TM1 Stop from March 22 until June 30, 2004 as a part-time call center representative working approximately 30 hours each week. On or about June 25, another employee reported that checks from her checkbook had been stolen while she was at work. On June 27, the employer was notified by the Cedar Rapids Police Department that it was believed that Ms. Spiller was responsible for the theft. When questioned, she denied any knowledge of the theft. She was suspended pending a further investigation. The employer subsequently learned from the police department that Ms. Spiller had admitted to taking the checks and forging the co-worker's signature on them. The employer attempted to contact her by telephone to advise of her discharge but she did not return messages left for her. The above matter was the sole reason for the discharge.

Ms. Spiller has received a total of \$1,470.00 in job insurance benefits since filing her claim effective August 8, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Spiller was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Spiller was discharged for theft of property belonging to a co-worker. She stole and forged checks belonging to another employee. An employer has the right to expect that not only will employees refrain from stealing from the employer but from other employees as well. Ms. Spiller knew or should have known that her conduct was contrary to the employer's standards. For the above reasons, the administrative law judge concludes that Ms. Spiller was discharged for misconduct in connection with her employment. Accordingly, benefits are denied.

Ms. Spiller has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated August 26, 2004, reference 01, is hereby reversed. Ms. Spiller was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Spiller has been overpaid \$1,470.00 in job insurance benefits.

cfc/tjc