

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA N NOGGLE**  
Claimant

**APPEAL NO. 10A-UI-10116-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KWIK SHOP INC**  
Employer

**OC: 06/13/10**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated July 12, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 1, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Tiffany Wright participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked for the employer as a store clerk from November 9, 2009, to June 14, 2010. The claimant was informed and understood that under the employer's cash limits in register policy, employees were allowed to have a maximum of \$40.00 in their cash registers from 11:00 p.m. and 6:00 a.m. to decrease the risks of robbery. Under the policy, employees were subject to termination if they had over \$150.00 in their registers. The claimant had received training on this when she was hired, and it was repeatedly emphasized in staff meetings.

On June 14, 2010, the claimant had \$213.00 in her register when she closed her register at 12:19 a.m. The claimant willfully violated the employer's cash limits in register policy. She was discharged on June 14 based on this violation.

Notice of the hearing was mailed to the claimant on August 2, 2010. The claimant did not pick up mail from her post office box until August 31, 2010. She knew she had a hearing scheduled at 8:30 a.m. on September 1, 2010. She overslept in the morning and did not call in regarding her hearing until 10:52 a.m.

## **REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether the claimant has shown good cause to reopen the hearing. Going three weeks without picking up mail and oversleeping do not establish good cause.

The next issue is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated July 12, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/css