

**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**

**Appeal Number: 04A-UI-01670-H2T
OC 01-11-04 R 04
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.

**KAREN M STRILEY
549 – 6TH AVE S
CLINTON IA 52732**

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.

**CIGARETTE OUTLET INC
C/O JOSEPH DEPAEPE
319 E 2ND ST STE 104
MUSCATINE IA 52761 4100**

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/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 5, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 8, 2004. The claimant did participate. The employer did participate through Debra Schnyder, Supervisor and Steve Thompson, Vice President. Employer’s Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a Store Manager full time beginning September 5, 2001 through

January 12, 2004 when she was discharged. The claimant falsified her time sheets by including extra hours on her time sheet that she supposedly worked but did not in fact work. The claimant was not allowed to work at home and was told so on December 15, 2003. Ms. Schnyder specifically told her that she was to perform all paperwork at the office. The claimant admitted at hearing that she falsified the time sheet of another employee, Jessica, resulting in Jessica being shorted in pay for two hours. The claimant also falsified her own time sheets on December 11, 2003, December 13, 2003, December 16, 2003 and January 6, 2004.

On December 11, 2003, the claimant alleges that she worked 12.25 hours that day, yet she did not include herself on the daily worksheet as an employee. Also the claimant alleged that she opened the store at 6:10 a.m. when in fact per mar security records show that another employee, Jessica, opened the store at 7:29 a.m.

On December 13, 2003, the claimant indicated on her time sheet that she had opened the store at 8:00 a.m. and worked until 3:00 p.m. A statement from another employee Bill Dunlop indicates that he worked from noon until close and that he did not see the claimant in the store at all on that day. The claimant did not open the store that day, another employee Jessica did.

On December 16, 2003, the claimant indicated on her time sheet that she had worked until 4:00 p.m. but her Supervisor, Debra Schnyder was in the store beginning at 2:15 p.m. and the claimant was not in the store after that time.

On January 6, 2004, the claimant's Supervisor Debra Schnyder arrived at the store at 2:20 p.m. and the claimant was not present at the store. Ms. Schnyder waited until approximately 7:30 p.m. for the claimant to return to the store but she never did. The claimant's time sheet specifically indicated that she was at work until 4:00 p.m.

The claimant was terminated on January 2004 for falsification of her time sheets.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

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 admitted that she changed Jessica's time sheet so that it did not correctly reflect the time that Jessica had worked resulting in Jessica's paycheck being shorted. The claimant also was specifically told to perform her work at the store, not to take it home with her on December 15, 2003. Thereafter, the claimant alleged she was working at home. The claimant's falsification of her time sheet is theft from the employer and 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 February 5, 2004, reference 01, 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 \$1,008.00.

tkh/kjf