

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN C FOUCH
Claimant

APPEAL NO. 11A-UI-08169 -VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWESTERN TRADING INC
Employer

**OC:05/08/11
Claimant: Respondent (2R)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated June 13, 2011, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 15, 2011, in Cedar Rapids, Iowa. The claimant notified the agency in writing that she would not be participating. Employer participated by Rick Stickle, owner. The record consists of the testimony of Rick Stickle and Employer's Exhibits 1-10.

ISSUES:

Whether the claimant was discharged for misconduct; and

Whether the claimant was overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is engaged in a number of different businesses including land management; truck brokerage; and warehousing. The claimant was hired on April 8, 2010, as an accounting clerk. Her duties included posting invoices; writing checks; and handling petty cash. She was a full-time employee.

The events that led to the claimant's termination began when the employer discovered that the claimant was manipulating her time punches to inflate the amount of time reflected in her paycheck. Monitoring software was put on the claimant's computer so that the employer could determine when and how the claimant was changing her time cards. A spreadsheet was prepared on February 6, 2011, and shown to Rick Stickle, the president. Mr. Stickle confronted the claimant on February 11, 2011. At that time, the decision was made to terminate the claimant. The employer felt sorry for the claimant because her economic situation was so dire. The employer agreed to give the claimant a second chance.

The employer continued to monitor the claimant's activities and it was discovered that she was taking petty cash and changing records to cover up her misappropriations. Mr. Stickle took the petty cash box from the claimant and then examined the claimant's keystrokes in order to confirm the initial investigation. The employer decided to again terminate the claimant on April 27, 2011, for dishonesty.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed to the employer by an

employee is honesty. An employer can reasonably expect that an employee will not falsify time records and will not misappropriate the employer's property. The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant was discovered falsifying her time records in February 2011. She was going to be terminated but the employer agreed to give her a second chance. After she was given this second chance, she was discovered stealing petty cash and making false accounting entries to cover up her theft. The claimant's actions are deliberate and a wanton breach of her duty of honesty to her employer. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the claims section for determination.

DECISION:

The decision of the representative dated June 13, 2011, reference 02, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs