

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

RYAN N GOULD

Claimant

APPEAL NO: 19A-UI-10310-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC

Employer

OC: 12/01/19

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 18, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 3, 2020. The claimant did not respond to the hearing notice and did not participate in the hearing. Bryan Schaufenbuel, Store Manager and Steve Ruiz, Assistant Store Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assistant manager for O'Reilly Automotive from January 4, 2017 to November 25, 2019. He was discharged after having a \$10.35 shortage on his register when he was on a final written warning.

On June 17, 2017, the claimant received a verbal warning for a no-call no-show absence.

On May 23, 2019, he was placed on a final written warning after he was using his employee discount to purchase parts for his friends and customers. Loss Prevention investigated and determined the claimant's actions cost the employer \$415.02 which was the difference between the retail and team member pricing. The claimant signed a restitution agreement and was told he could not use his employee discount on behalf of anyone else. The final written warning indicated that if the claimant had any other violations in the next year his employment would be terminated.

On November 24, 2019, the claimant's drawer was \$10.35 short. The registers are not to be more than 50 cents over or short and any shortage of \$1.00 or more must be explained in the comments field. The employee responsible for the shortage is expected to try to find where the error occurred but the employer does not believe the claimant did so. When the store manager

came in the next day to do the deposit he discovered the shortage. The employer terminated the claimant's employment November 25, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant was on a final written warning, six months had passed without any documented incidents on the part of the claimant. The claimant made a \$10.35 error on the register November 24, 2019. There is no evidence showing the claimant's actions were intentional misconduct rather than a simple mistake. Additionally, because six months passed without any incidents between the final written warning and the shortage on the register, this can be viewed as an isolated incident of misconduct. As such, no disqualification is imposed. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The December 18, 2019, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs