

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

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Appeal Number: 04A-UI-04655-LT
OC 04-04-04 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/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from the April 22, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 17, 2004. Claimant did participate. Employer did participate through Mary Ann Towsley and Gale Wilson. Employer's Exhibits One and Two were received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time cage cashier through April 1, 2004 when he was discharged. Gale Wilson, supervisor, received a customer complaint on March 31, 2004. The customer went to

the cashier window and asked Ron for \$100.00 in five dollar bills. He rolled his eyes and said, "You want 105?" He then counted the bills repeatedly and slammed them down on the counter in front of the customer. Claimant denied recollection of the event.

Employer warned claimant about customer complaints and rudeness to employees on November 24, 2003 and suspended him for three days. He cashed a traveler's check for a customer who complained he was doing more talking to the customer than working. Claimant told the cage supervisor, "If the customer was upset, it was just too bad."

He was placed on a 90-day probation on both October 15, 2003 and July 15, 2003 for rudeness to customers and employees. Claimant was very short with customers as if it was an inconvenience to him. On July 15 Gale Wilson received a letter from a previous employee, Jackie Phipps, who complained that she had quit because of incidents involving claimant getting angry with customers, rolling his eyes, slamming down pens and rudeness. She also reported he would not wait on customers shortly before the shift end. He had talked to her about sexual subjects, including visiting pornographic sites on the internet. On July 13 another cage cashier, Karen Piper, wrote employer complaining about claimant's insolence, lack of respect of customers and coworkers and speaking about pornography and erotica in spite of being asked not to do so. She also recalled that he leaned down to straighten his floor mat when customers approached to avoid waiting on them. On August 25, 2003 Joyce Jensen reported claimant yelled at her for asking him to make change for customers.

Claimant acknowledged multiple counseling sessions with Gale Wilson and Mary Ann Towsley about his conduct with customers and coworkers.

The claimant has received unemployment benefits since filing a claim with an effective date of April 4, 2004.

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 U.S. Supreme Court has held that a cause of action for sexual harassment may be predicated on two types of harassment: (1) Harassment that involves the conditioning of concrete employment benefits on sexual favors, and (2) harassment that, while not affecting economic benefits, creates a hostile or offensive working environment. Meritor Savings Bank v. Vinson, 477 U.S. 57, 62 (1986).

Claimant's nearly universal lack of recollection is not credible, especially in light of not one, but three complaints of harassment and his lack of recollection of warnings he signed in acknowledgement, even if not agreement. His extended and extreme pattern of rudeness to customers and rudeness and sexual harassment of coworkers was contrary to the interests of the employer in maintaining a friendly environment for customers and a harassment-free atmosphere for employees. Claimant's violation of these reasonable expectations 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 April 22, 2004, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,105.00.

dml/s