

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHERYN L HARRINGTON**  
Claimant

**APPEAL NO. 09A-UI-17858-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEAVER ENTERPRISES LTD**  
Employer

**Original Claim: 10/11/09  
Claimant: Appellant (1)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Katheryn Harrington filed a timely appeal from the November 19, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on January 8, 2010. Ms. Harrington participated. Terry Moffitt, Director of Operations, represented the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer operates a KFC restaurant in Waterloo. Katheryn Harrington was employed by Weaver Enterprises, Ltd., as a full-time Second Assistant Manager from February 5, 2009 until September 24, 2009, when Joe Rechtfertig, Senior Area Coach (Supervisor) discharged Ms. Harrington for dishonesty.

On September 20, 2009, someone burglarized the employer's restaurant and stole in excess of \$4,000.00 from the employer's safe. The safe was not properly secured. Ms. Harrington was the closing manager on September 20 and was the last person responsible for securing the safe. In connection with the burglary, the burglars damaged the workplace surveillance cameras in an effort to avoid being identified. Police investigated and concluded the burglary was an inside job. The management staff was in the habit of not fully securing the safe. The management staff would close the safe, but would not spin the dial. General Manager Maria Cooper instructed Ms. Harrington to use this method for securing the safe. By not spinning the dial, the management staff left the safe so that it could be opened by means of a key alone with no need to use the combination. Leaving the safe in this condition made it easier for the burglars to steal the money from the safe on September 20, 2009.

On September 21, 2009, Joe Rechtfertig, Senior Area Coach (Supervisor) interviewed all of the restaurant employees. Mr. Rechtfertig interviewed Ms. Harrington. Ms. Harrington understood that she was being interviewed as part of the employer's investigation into a serious crime.

During the interview, Ms. Harrington told Mr. Rechtfertig that she *had* spun the dial to secure the safe at the end of her shift on September 20. This was not true. Later in the interview, Ms. Harrington admitted that she had *not* spun the dial on the safe. The employer reviewed the video surveillance that showed Ms. Harrington had not spun the dial.

On September 24, 2009, Mr. Rechtfertig discharged Ms. Harrington for lying during her interview.

Ms. Harrington asserts that General Manager Maria Cooper had asked her to lie to the employer and to say that the managers always spun the dial when securing the safe. But Ms. Harrington was the only manager who made such an assertion during the investigation. The weight of the evidence indicates Ms. Cooper had not instructed Ms. Harrington to lie to the employer.

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

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board,

616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The weight of the evidence establishes that Ms. Harrington intentionally lied to the employer when she was interviewed as part of the employer's investigation into a felony burglary believed to have been committed by one or more employees. Ms. Harrington's lie was a willful and wanton violation of the employer's interests. Regardless of whether Ms. Harrington sought to take back the lie—or tell a new one—later in the interview, the damage was done. The weight of the evidence does not support Ms. Harrington's assertion that Ms. Cooper told her to lie to the employer. Even if Ms. Cooper *had* asked Ms. Harrington to tell the employer she spun the safe dial, the evidence would then establish not only that Ms. Harrington lied to the employer, but also that Ms. Harrington *conspired* to mislead the employer. Regardless, Ms. Harrington made a decision to lie to Mr. Rechtfertig. Through her intentional dishonesty in the context of such a serious matter, Ms. Harrington fundamentally undermined the employer's ability to trust her and made her discharge from the employment necessary.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Harrington was discharged for misconduct. Accordingly, Ms. Harrington is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Ms. Harrington.

**DECISION:**

The Agency representative's November 19, 2009, reference 02, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/kjw