

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BILLY T BASSETT**  
Claimant

**APPEAL NO. 15A-UI-02557-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 02/01/15**  
**Claimant: Respondent (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code Section 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 17, 2015, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged for no disqualifying reason. After due notice was issued, a hearing was held on April 7, 2015. Claimant Billy Bassett participated. James Tranfaglia of Corporate Cost Control represented the employer and presented testimony through Todd Robertson and Craig Scharer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Five into evidence.

**ISSUE:**

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

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Billy Bassett was employed by Hy-Vee in Davenport as a full-time assistant manager until January 23, 2015, when Todd Robertson, Store Director, discharged him from the employment for unauthorized removal of Hy-Vee property. On January 23, 2015, the employer was investigating incidents in which a customer was allowed to purchase liquor at an unauthorized discount. In the course of reviewing surveillance video concerning the discounted liquor, Mr. Robertson reviewed video surveillance from December 27, 2014 that included a discounted liquor transaction. Included in that surveillance record was a transaction handled by Mr. Bassett. The surveillance record shows cash handling irregularities in connection with

Mr. Bassett ringing up a bottle of Pepsi that he provided to a customer. During an investigative interview with Mr. Robertson on January 23, Mr. Bassett identified the customer involved in the Pepsi transaction as someone to whom Mr. Bassett owed a soft-drink in connection with Mr. Bassett losing a sports bet with the customer. When the customer brought the Pepsi to the express checkout lane, Mr. Bassett took money from his own pocket and laid the money close to the customer to create the appearance that the money was coming from the customer, not Mr. Bassett. Mr. Bassett did this because he knew it was against the employer's established work rules for him to ring up his own purchase. Mr. Bassett scanned the Pepsi bottle to ring it up and open the cash drawer. Mr. Bassett then gave the appearance of making change for the customer as if it were an ordinary transaction. Mr. Bassett took change from the cash register drawer, though he had not placed any money in the cash register drawer. Mr. Bassett then placed in his own pocket the change he had obtained from the cash drawer and the money he had originally pulled from his pocket. In the video surveillance, Mr. Bassett appears relaxed. There is no indication whatsoever that Mr. Bassett is juggling duties or that he is distracted. Indeed, Mr. Bassett sends waiting customers away from the express lane three different times while he casually chats with the customer who ends up purchasing discount liquor from a coworker and while he chats with the customer in connection with the Pepsi transaction. In the video surveillance, Mr. Bassett modifies his behavior in connection with the Pepsi transaction when other employees approach to give the appearance that the transaction is an ordinary transaction, rather than him ringing up his own purchase in violation of the employer's policy. The customer involved in the Pepsi transaction received a Pepsi without anyone paying Hy-Vee for the soft-drink. Mr. Bassett knew it was against the employer's established work rules to remove company property without paying for it. The work rules were contained in the handbook that Mr. Bassett received at the time of hire in 2012. As an assistant manager, Mr. Bassett was responsible for enforcing the employer's work rules.

Mr. Bassett established a claim for benefits and received benefits. As of the April 7, 2015 fact-finding interview, Mr. Bassett had received \$951.00 in unemployment insurance benefits for the three-week period between February 8, 2015 and February 28, 2015. Mr. Robertson represented the employer at the February 16, 2015 fact-finding interview.

#### **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.

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 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The video surveillance record does not support Mr. Bassett's version of events. The video surveillance record documents a knowing and willful violation of multiple employer policies as well as an intent to mislead on-looking Hy-Vee staff. The weight of the evidence indicates that Mr. Bassett knowingly and intentionally violated the employer's policy against ringing up his own purchases. The weight the evidence indicates Mr. Bassett knowingly and intentionally gave merchandise away without compensating the employer for the merchandise. The weight of the evidence indicates that Mr. Bassett knowingly and intentionally pocketed change from the cash register that he knew did not belong to him. Mr. Bassett's conduct, regardless of the dollar amount involved, demonstrated an intentional violation of the standards of conduct that the employer reasonably expected of him. As an assistant manager, Mr. Bassett was placed in a special position of trust. Mr. Bassett's conduct, as documented in the video, was dishonest and fundamentally undermined employer's trust in him.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Bassett was discharged for misconduct. Accordingly, Mr. Bassett is disqualified for benefits until 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 unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$951.00 in unemployment insurance benefits for the three-week period between February 8, 2015 and February 28, 2015. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The February 17, 2015, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The claimant was overpaid \$951.00 in unemployment insurance benefits for the three-week period between February 8, 2015 and February 28, 2015. The claimant is required to repay the overpayment. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs