

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REBECCA L LARSON
Claimant

APPEAL 19A-UI-01441-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMES INVESTMENTS INC
Employer

**OC: 01/20/19
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the February 13, 2019, (reference 01) unemployment insurance decision that allowed benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on March 5, 2019. Claimant participated. Employer participated through payroll manager Walter Githens and area manager Deb Holdeman. Employer's Exhibits 1 through 3 were received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 10, 2018. Claimant last worked as a part-time shift manager. Claimant was separated from employment on January 14, 2019, when she was terminated.

Claimant became a shift manager in November 2018.

As a closing shift manager, claimant was responsible for entering the night's cash receipts in employer's computer system and completing a deposit slip. The cash receipts were then placed in the safe. The morning manager brought the deposit to the bank. If claimant worked on a Friday or Saturday night, the deposit would not be brought to the bank until Monday morning. Managers Amanda Jones and Jeffrey Davis had access to the safe, in addition to claimant.

At the beginning of December 2018, claimant's hours were reduced for one week. Claimant and manager Amanda Jones had an argument as a result.

Claimant closed the restaurant on Saturday, December 8, 2018. The deposit slip and cash receipts were \$200 less than the point of sale system reflected they should be. The deposit was brought to the bank on Monday, December 10, 2018. The deposit slip bears the initials "RL."

Claimant closed the restaurant on Saturday, December 22, 2018. The deposit slip and cash receipts were \$200 less than the point of sale system reflected they should be. The deposit was brought to the bank on Monday, December 24, 2018. The deposit slip bears the initials "RL."

Claimant closed the restaurant on Wednesday, December 26, 2018. The deposit slip and cash receipts were \$200 less than the point of sale system reflected they should be. The deposit was brought to the bank on Thursday, December 27, 2018. The deposit slip bears the initials "RL."

Claimant closed the restaurant on Friday, December 28, 2018. The deposit slip and cash receipts were \$200 less than the point of sale system reflected they should be. The deposit was brought to the bank on Monday, December 31, 2018. The deposit slip bears the initials "RL."

Claimant closed the restaurant on Saturday, December 29, 2018. The deposit slip and cash receipts were \$200 less than the point of sale system reflected they should be. The deposit was brought to the bank on Monday, December 31, 2018. The deposit slip bears the initials "RL."

Jeffrey Davis was on vacation and did not work from December 22 through December 30, 2018.

Claimant closed the restaurant on Saturday, January 5, 2019. The deposit slip and cash receipts were \$200 less than the point of sale system reflected they should be. The deposit was brought to the bank on Monday, January 7, 2019.

Claimant closed the restaurant on Saturday, January 12, 2019. The deposit slip and cash receipts were \$100 less than the point of sale system reflected they should be. The deposit was brought to the bank on Monday, January 14, 2019.

On January 14, 2019, area manager Deb Holdeman reviewed the deposit slips initialed with RL and quickly realized they did not match the cash receipts reflected in employer's point of sale system. Employer terminated claimant the same day.

Employer did not interview Amanda Jones about the issue.

Claimant had never been previously disciplined for similar conduct.

Employer provided copies of the deposit slips to local law enforcement. On January 18, 2019, claimant was arrested and charged with theft in the second degree. The charges are still pending.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, employer terminated claimant for her alleged repeated theft from the restaurant. Employer presented evidence convincing the administrative law judge that one of its employees stole money from employer, but did not present any convincing evidence that it was claimant who did so. Both claimant and manager Amanda Jones had access to the safe and the deposits in question. Although the deposit slips bear claimant's initials, it would not be difficult for Jones to have drawn up new deposit slips and mimic claimant's style of handwriting on the original deposit slip. It would have been very foolish for claimant to have participated in a crime for which she would so obviously have been caught by putting her own initials on the deposits she was shorting when she had just verified the correct number in employer's computer system. Claimant denies engaging in the conduct and employer did not question Jones regarding the incident. I find claimant's denial more convincing than employer's evidence and find employer failed to establish claimant committed the misconduct.

Because claimant is not disqualified from receiving benefits, the issues regarding overpayment are moot at this time.

DECISION:

The February 13, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn