

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SHELLY I PARTUSCH**  
Claimant

**B R STORES INC**  
Employer

**APPEAL 17A-UI-06805-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/11/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 27, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 21, 2017. Claimant participated. Employer participated through assistant store director Brian Marohl and was represented by director of human resources Donna Bristol. Employer's Exhibit 1 was received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 18, 2016. Claimant last worked as a part-time cashier. Claimant was separated from employment on June 8, 2017, when she was terminated.

The cashier and employer count the funds in each cashier's drawer at the end of each shift. Employer has a policy stating that if an employee has a drawer inaccuracy of more than \$10.00 a help report will be issued and the employee will receive retraining. If an employee has a second inaccuracy of more than \$10.00 within six months, a help report will be issued and the employee will be suspended for one day. If an employee has a third inaccuracy of more than \$10.00 within six months, a help report will be issued and the employee will be suspended for three days. Employees are terminated after their fourth inaccuracy of more than \$10.00 within six months. Claimant was aware of the policy.

Employer requires its cashiers to count back change. Claimant is capable of counting back change.

On May 5, 2017, claimant's drawer contained \$29.05 more than it should have at the end of her shift. Employer issued a help report on May 18, 2017.

On May 12, 2017, claimant's drawer contained \$39.12 less than it should have at the end of her shift. Employer issued a help report and a one day suspension on May 19, 2017.

On May 18, 2017, claimant's drawer contained \$11.05 less than it should have at the end of her shift. On May 19, 2017, claimant's drawer contained \$10.46 less than it should have at the end of her shift. Employer issued a help report and a three-day suspension on May 26, 2017.

On June 3, 2017, claimant's drawer contained \$10.09 less than it should have at the end of her shift.

Claimant was terminated on June 8, 2017.

### **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 § 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 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, claimant's drawer was inaccurate by more than ten dollars on five occasions in less than one month. Claimant was capable of performing the job accurately as she had done so up to that point. Claimant's repeated failure to accurately perform her job duties after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a.

Claimant's argument that other employees were not terminated for a similar or more egregious number of drawer inaccuracies is not convincing because she was unable to identify any specific employees who engaged in the conduct and were not terminated.

Employer established claimant was terminated for job-related misconduct. Benefits must be denied.

**DECISION:**

The June 27, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant is deemed eligible.

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Christine A. Louis  
Administrative Law Judge  
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Decision Dated and Mailed  
cal/scn