

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DESSERA T GRIFFITH
Claimant

APPEAL NO. 08A-UI-04514-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC
Employer

**OC: 03/23/08 R: 04
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Flying J, filed an appeal from a decision dated April 29, 2008, reference 01. The decision allowed benefits to the claimant, Dessera Griffith. After due notice was issued a hearing was held by telephone conference call on May 27, 2008. The claimant participated on her own behalf. The employer participated by Front of the House Manager Cody Kerns and was represented by Unemployment Services in the person of Michelle Hawkins

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Dessera Griffith was employed by Flying J from August 23, 2005 until March 21, 2008. At the time of separation she was a full-time shift manager working 8:00 p.m. until 6:00 a.m. Her work performance had been satisfactory up until the time she became a shift manager. Then, beginning in August 2007, cash shortages began to occur in her drawer during her shift. She received warnings on this problem on August 17, 23, and 26, 2007. When questioned about the shortages, Ms. Griffith had no explanation as to how they occurred.

A final written warning was issued on February 1, 2008, for cash shortages on January 4, 10, and 16, 2008. She was notified her job was in jeopardy if there were any further incidents. For the shift that ended on March 21, 2008, the accounting manager found a shortage of \$99.65. The claimant again did not know how the shortage occurred and was discharged that day by General Manager Kevin Moninski.

Dessera Griffith has received unemployment benefits since filing a claim with an effective date of March 23, 2008.

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 claimant had been advised her job was in jeopardy as a result of the cash shortages in her drawer. There was no explanation as to why her performance suddenly deteriorated, or why it would improve after a warning and then deteriorate again. However, the record does establish she was capable of doing better after a disciplinary action and her failure to maintain that level of satisfactory performance can only be attributed to lack of ordinary care in the performance of her job duties. This is conduct not in the best interests of the employer and the claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 29, 2008, reference 01, is reversed. Dessera Griffith is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$345.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw