

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARLENE STOVER
Claimant

APPEAL NO: 16A-UI-05766-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THEISENS INC
Employer

OC: 04/24/16
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 18, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 7, 2016. The claimant participated in the hearing. Connor Woodruff, Assistant Manager, and Heidi Bergfeld, Human Resources Administrator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time sales associate for Theisens Inc. from December 4, 2015 to April 25, 2016. She was discharged after her register failed to balance on four occasions between December 22, 2015 and April 25, 2016.

The claimant received a verbal counseling December 22, 2015, after her register was over by \$10.00 on December 21, 2015. She received a written warning March 8, 2016 because her register drawer was short by \$20.00 on March 7, 2016. She received a one-day suspension April 25, 2016 because her cash drawer was over by \$10.00. The employer terminated the claimant's employment April 25, 2016 because her register drawer was short by \$40.00 on April 24, 2016.

The claimant was the only cashier on her drawer during each of the shifts listed above. The head bookkeeper counts all cashiers' drawers and leaves the receipt in each drawer. She then walks the drawers up to the front of the store and puts them in the register. The supervisor, manager, or general manager counts the drawers at the end of each shift. The register computer generates a document showing all sales and all cash run through each drawer. If there is an overage or shortage management attempts to reconcile the count separately the following day.

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 of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant accumulated two shortages and two overages between December 22, 2015 and April 25, 2016. While the employer does not believe the claimant was stealing money, it was a question of negligence in making too many errors and rather than showing improvement the claimant's performance appeared to be declining. The employer conducted her employee evaluation March 28, 2016, and extended her introductory period due to the number of cashier errors.

Under these circumstances, while the administrative law judge does not believe the claimant intentionally made these errors, she must conclude the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The May 18, 2016, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/can