

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN T GALBREATH III
Claimant

APPEAL NO: 10A-UI-06262-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NELLIS MANAGEMENT COMPANY
Employer

OC: 03/07/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

John T. Galbreath (claimant) appealed a representative's April 19, 2010 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Nellis Management Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 14, 2010. The claimant participated in the hearing. John Blanchard appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 15, 2009. He worked part time (25-30 hours per week) as a team member at the employer's Des Moines, Iowa Long John Silver's restaurant. His last day of work was January 7, 2010. The employer discharged him on January 8, 2010. The stated reason for the discharge was misappropriation of funds and dishonesty.

The employer performed an audit of recent void transactions at the restaurant. Between November 4 and December 29, the claimant was responsible for 35 transactions in which a high value item, such as a family meal, was initially rung up as ordered, then voided out and replaced by a \$.99 item. The total value of the items "voided" was \$367.00. The claimant was the only employee at the restaurant who had any of these void transactions. There had been a detectable drop in accounted for inventory at the restaurant during this same period. The employer concluded that the claimant had voided the large ticket items on the orders, then delivered the original items to the customer and took the customer's monies for the original order, but then only deposited into the drawer the amount of the replacement \$.99 order, keeping the difference. As a result, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

While the claimant denied misappropriating the funds, the administrative law judge concludes that the employer has presented sufficient circumstantial evidence to establish by a preponderance of the evidence that the claimant was responsible for the misappropriation. The claimant's misappropriation and dishonesty shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 19, 2010 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving

unemployment insurance benefits as of January 8, 2010. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs