

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BRIAN D VANCE**  
Claimant

**MCSOIFER'S INC**  
Employer

**APPEAL NO. 14A-UI-05155-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/27/14  
Claimant: Respondent (2/R)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated May 15, 2014, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 12, 2014. Claimant participated personally. Employer participated by Christy Keppler. Employer's Exhibits 1-2 were admitted into evidence.

**ISSUES:**

Was claimant discharged for misconduct?

Was claimant overpaid benefits?

Should the claimant repay benefits if he was found to be overpaid those benefits, or should they be non-recoverable based on employer's lack of participation in fact finding?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 20, 2014. Employer discharged claimant on April 21, 2014 because of theft.

On April 17, employer purchased a set of headphones for use with the training computer. On April 18, those headphones were not able to be located. An employee noticed that the headphones were located in claimant's pocket. She didn't wish to confront claimant, so she took a photo of the headphones in the pocket. Later she told the store manager of the photo when the headphones had been discovered missing. Claimant denied taking the headphones.

In this matter the testimony of employer's witnesses is more credible and plausible than that of claimant. In order for claimant's story to have happened, one person, without talking to another employee, would have had to place the headphones in claimant's pocket, then hope that another employee would see the headphones in the pocket, then later remove the headphones from claimant's pocket and steal them for themselves.

## REASONING AND CONCLUSIONS OF LAW:

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *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).

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning theft. Claimant was warned concerning this policy as the policy manual dictates that theft will lead to dismissal. The last incident, which brought about the discharge, constitutes misconduct because theft is an act of misconduct. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

The evidence also established that claimant was overpaid benefits in this matter. As employer did participate in fact finding, employer will not be held responsible for the benefits paid to the claimant.

**DECISION:**

The decision of the representative dated May 15, 2014, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. This matter is remanded to IWD fact finders to determine the amount of benefits claimant was overpaid, and must repay.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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