

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUDITH A CASEY

Claimant

APPEAL 20A-UI-02423-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOMGAARS SUPPLY INC

Employer

OC: 02/23/20

Claimant: Appellant (2)

Iowa Code § 96.5(2)b & c – Discharge/Gross Misconduct

STATEMENT OF THE CASE:

On March 13, 2020, the claimant filed an appeal from the March 12, 2020, (reference 02) unemployment insurance decision that deleted claimant's wage credits based on a finding of discharge for gross misconduct. The parties were properly notified about the hearing. A telephone hearing was held on April 29, 2020. Claimant participated. Employer participated through benefits administrator Barb Bohlke.

ISSUE:

Was the claimant discharged for reasons related to job gross misconduct sufficient to warrant a deletion of wage credits prior to the separation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 3, 2014. Claimant last worked as a full-time assistant manager. Claimant was separated from employment on February 24, 2020, when she was terminated.

Employer has a policy stating that all money found on company property should be given to management. Employer also has an ethical conduct policy. It states that if a situation arises where it is difficult to determine the appropriate course of action, the employee should consult with a supervisor. Claimant was aware of the policies.

On February 5, 2020, a customer purchased a money order from Wal-Mart in the amount of \$475.00. The customer paid cash for the money order. The customer then went to employer's store to shop. Later that day, the customer came back and asked the store manager, Rob, if anyone found a money order. The customer believed he lost it at employer's store. Rob told the customer that no one had turned his money order in. Claimant and another employee, Jodi Rettig, were working at employer's store that day and did not get off of work until the late evening hours.

Employee Rettig found the customer's money order. Rettig informed claimant she found the money order. Since it was paid for in cash, it did not have the customer's name on it. Claimant and Rettig held onto the order for a couple of days.

On February 7, 2020, claimant and Rettig cashed the money order. Claimant signed the money order, stating she had purchased it. Rettig signed the money order to cash it. The two split the money.

On February 22, 2020, the customer came back into employer's store with a receipt showing claimant and Rettig cashed his money order. The customer said that he wanted his money back because he needed to pay rent. The customer said that if they returned his money, he would not press charges. Claimant went to the bank and gave the customer his money. No charges were filed.

Employer suspended claimant.

After consultation with human resources, employer terminated claimant's employment on February 24, 2020.

Claimant had never been previously disciplined for similar conduct.

While claimant verbally admitted to the conduct, she has not signed a written statement admitting she engaged in the conduct.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)b provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

Iowa Code section 96.5(2)b and c provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement

admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

Under Iowa Code section 96.5(2)(b) "if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers."

In this case, claimant may have committed an indictable offense in connection with her employment. However, claimant was not convicted of the offense and claimant has not signed a statement admitting to the commission of such an act. Therefore, employer has not established claimant was terminated for gross misconduct under the requirements of the law and her wage credits shall not be deleted. To be clear, claimant is not qualified to receive benefits based on this separation from employment, as noted in Appeal Number 20A-UI-02422-CL-T. This decision is only stating that her wage credits will not be deleted, and that it is therefore possible for her to requalify for benefits.

DECISION:

The March 12, 2020, (reference 02) decision is reversed. The claimant was not discharged from employment due to gross misconduct. Wage credits shall not be deleted from all employers prior to the date of discharge on February 24, 2020.



Christine A. Louis
Administrative Law Judge
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April 30, 2020
Decision Dated and Mailed

cal/scn