

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LUANNE TAPPAN**

Claimant

**APPEAL NO. 14A-UI-01295-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 04/21/13**

**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment  
871 IAC 24.10 – Employer Participation

**STATEMENT OF THE CASE:**

The employer, Casey's, filed an appeal from a decision dated January 28, 2014, reference 03. The decision allowed benefits to the claimant, Luanne Tappan. After due notice was issued a hearing was held by telephone conference call on February 26, 2014. The claimant participated on her own behalf. The employer participated by Store Manager Kristin Mathis and Consultant Lori Ceselski

**ISSUES:**

The issues are whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

**FINDINGS OF FACT:**

Luanne Tappan was employed by Casey's from June 13, 2013 until January 6, 2014 as a part-time cashier and pizza maker. She received a verbal warning October 18, 2013, for a shortage in her cash register of \$38.15. Store Manager Kristin Mathis gave her an additional 14 hours of training on the registers and cash handling procedures.

After that the manager scheduled the claimant so that there would be other employees available to help her, but then she began to receive complaints that Ms. Tappan required their help so often they could not get their own work done.

On December 21, 2013, she received a verbal warning for a gas drive off. Although the cashiers are not expected to be able to prevent a drive off, they are expected to get a license plate number, a description of the driver, the color of the car and any other details. Ms. Tappan did not do any of this.

On December 22, 2013, Ms. Mathis found another shortage of \$46.06 in the claimant's cash drawer and she was written up for it. On December 29, 2013, her drawer was \$11.60 short. Company policy calls for discharge for any employee who is \$50.00 short in a seven-day time period. Ms. Mathis notified her of the discharge on January 6, 2014.

Luanne Tappan has received unemployment benefits since filing an additional claim with an effective date of January 5, 2014. The employer did participate in the fact-finding interview.

## **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 her failure to follow proper cash handling procedures. These had resulted in many large shortages in her cash drawer in spite of retraining and help from other staff. The claimant's continued failure to follow the correct procedures resulted in loss of revenue to the employer. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met:

(1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The unemployment insurance decision dated January 28, 2014, reference 03, is reversed. Luanne Tappan is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The claimant is overpaid unemployment benefits in the amount of \$1,665.00. This must be recovered in accordance with the provisions of Iowa law.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs