

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI JOHNSON
Claimant

APPEAL NO. 08A-UI-10023-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WORK SERVANT INC
Employer

**OC: 10-14-08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 21, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 13, 2008. The claimant participated in the hearing. Anna Rowell, Secretary/Treasurer, and Steve Rowell, President/Vice-President, 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 parts counter sales person for Work Servant from April 9, 2008 to September 26, 2008. On August 14, 2008, the drawer was short \$60.00. After looking for the money for a few days, the claimant “found” a receipt dated August 12, 2008, that matched the amount of money written on a receipt by the employer August 14, 2008, but it was not in the employer’s handwriting. At that time, the employer began doing a random count of the drawer throughout the day and every night and morning. On September 23, 2008, the claimant arrived for work at 8:00 a.m. Tom, another employee, arrived at 7:00 a.m. or 7:30 a.m. and counted the drawer. The employer always left one twenty dollar bill with a paperclip on it, three ten dollar bills, three five dollar bills, and then the remainder of the drawer equals \$35.00 for a total of \$100.00. The count was correct when done by Tom before the claimant arrived. That morning a customer dropped off a snow blower and Tom went outside to help him with it. Another customer came in to pick up his lawnmower and the claimant took his check. Tom took a copy of the receipt to the back room and retrieved the mower and helped the customer take the mower to his car and load it. While he was outside, the man who does the employer’s blade and chain sharpening work came in to pick up his pay. When Tom opened the register to get the \$23.00 owed the man, the \$20.00 bill with the paperclip was gone. Tom searched but could not find the \$20.00. Secretary/Treasurer Anna Rowell came in at 9:15 a.m. and Tom told her the drawer was short. They went over everything but could not find the \$20.00 bill, and in the process discovered an additional \$10.00 was missing. The claimant was the only person who

had been in the drawer after it was counted that morning. The employer decided to contact the Marion Police Department that evening. After conducting an investigation, the police came to the store September 26, 2008, and took the claimant in for questioning before charging her with fifth degree theft. The employer notified her it was terminating her employment effective immediately.

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 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.

While the claimant denies taking the money and a criminal trial is scheduled for November 21, 2008, she was the only one left alone in the store September 23, 2008, between the time Tom arrived and counted the drawer and the time he discovered the drawer was short approximately one hour and 15 minutes later. There was no occasion for her to make change, so the only time she needed to enter the drawer was to take the customer's check. The suspicion might not have fallen on her but for the shortage August 14, 2008, during which the claimant produced a receipt a few days later that did not match Ms. Rowell's handwriting after the employer had scoured the store for the missing \$60.00 and before it implemented the random count. The burden of proof in an administrative hearing is by the preponderance of the evidence rather than beyond a reasonable doubt as in a criminal trial. In this case, the administrative law judge

concludes it is more likely than not that the claimant was responsible for the shortages and her 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). Benefits are denied.

DECISION:

The October 21, 2008, reference 02, 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/kjw