

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUE A BUCKLEY
Claimant

UP PROPERTIES II, LLC
Employer

**APPEAL 19A-UI-07781-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/08/19
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

Employer/appellant filed an appeal from the September 24, 2019 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 24, 2019, at 3:00 p.m. Claimant did not participate. Employer participated through Audrey Harley, Hearing Representative. Aaron Kurt, District Manager, was a witness for employer. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time General Manager from March 1, 2018 until her employment with UP Properties II, LLC (a Fazoli's restaurant franchise) ended on September 5, 2019. Claimant's direct supervisor was Aaron Kurt, District Manager.

On September 1, 2019, employer learned that the deposit for August 30, 2019 was missing. Employer investigated. Claimant told employer that she took the deposit to the bank after she closed the restaurant, which would have been between 12:15 a.m. and 12:45 a.m. on August 31, 2019. Depositing employer's funds at the bank at night is against employer's cash handling policy. The policy is outlined in employer handbook, of which claimant received a copy. Employer asked its bank to investigate the matter by reviewing surveillance video. The bank staff know claimant and her vehicle. The bank responded that there was no video of claimant making a deposit on the date and at the times she indicated. Employer confronted claimant with the information obtained by the bank. Claimant maintained that she took the deposit to the bank.

Employer told claimant that it would continue its investigation and that the matter was not resolved.

Claimant was the closing manager on September 2, 2019. It was claimant's responsibility to deposit the receipts in the employer's safe at the end of the day. When the opening manager arrived at the store on September 3, 2019, she noticed that the deposit from September 2, 2019 and \$100.00 were missing from the safe. Employer investigated the incident and discovered that claimant accessed the restaurant on September 3, 2019 at 6:55 a.m. and left again at 6:59 a.m.; employer identified claimant as the person who accessed the restaurant because she used her personal alarm code. There was no reason for claimant to access the restaurant at that time of day and for only five minutes. Employer confronted claimant who denied taking the money. When employer confronted claimant with her access of the restaurant, claimant had no response. Employer completed its investigation and decided to terminate claimant's employment. Employer discharged claimant on September 5, 2019 for theft.

The administrative record reflects that claimant has neither filed for nor received unemployment insurance benefits, since filing her original claim on September 8, 2019. Employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

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.

Iowa Admin. Code r. 871-24.32(1)a provides:

- 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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord*

Lee v. Emp't Appeal Bd., 616 N.W.2d 661, 665 (Iowa 2000). Further, 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law.

Claimant was discharged for multiple incidents of theft from employer. A company policy against theft is not necessary; honesty is a reasonable, commonly accepted duty owed to the employer. Claimant's theft was contrary to the best interests of his employer and constitutes a deliberate violation or disregard of standards of behavior employer had a right to expect of her. Claimant was discharged for disqualifying, job-related misconduct. Benefits are denied. Because no benefits were paid to claimant, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The September 24, 2019 (reference 01) unemployment insurance decision is reversed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/scn