

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**REBECCA S ERPS
2011 DIXWELL
DAVENPORT IA 52802**

**HASTY TASTY FOOD SERVICE INC
DBA VALLEY VENDING
2501 BLACKHAWK ST
DAVENPORT IA 52802**

**Appeal Number: 04A-UI-05927-AT
OC: 05-02-04 R: 04
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Valley Vending filed a timely appeal from an unemployment insurance decision dated May 20, 2004, reference 01, which allowed benefits to Rebecca S. Erps. After due notice was issued, a telephone hearing was held June 29, 2004 with Ms. Erps participating. Manager Larry Campbell participated for the employer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Rebecca S. Erps was employed by Valley Vending as a vault clerk from December 9, 2003 until she was discharged May 7, 2004. A few weeks before the discharge, Teresa Meyers had alerted Manager Larry Campbell of shortages involving money handled by Ms. Erps. On April 26, 2004, Mr. Campbell counted money being brought in by a route driver. The money was handed back to the route driver who took it immediately to Ms. Erps. Her count was \$20.00 less than the amount Mr. Campbell counted. The money could not be found in a search of money going through the vault. On May 7, 2004, Mr. Campbell counted \$56.00 in cash before Ms. Erps arrived. The money was left in the vault which was locked. No one had access until Ms. Erps arrived. Ms. Erps reported that there had been \$26.00 rather than \$56.00. When Mr. Campbell confronted Ms. Erps, she had no explanation for the discrepancy. He then discharged her.

Ms. Erps has received unemployment insurance benefits since filing a claim effective May 2, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether a preponderance of the evidence in this record establishes that Ms. Erps was discharged for misconduct in connection with her employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof. The employer has established two incidents within two weeks in which money counted by Ms. Erps came up short. The evidence establishes that the claimant was the only individual having access to the cash and that the employer took reasonable steps to search for an error or other explanation. Whether accidentally or by design, Ms. Erps employed cash handling techniques which permitted money belonging to the employer to disappear. Benefits are withheld.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Ms. Erps has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated May 20, 2004, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$1,232.00.

tjc/tjc