

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULISSA HERRALD
Claimant

APPEAL NO: 10A-UI-12607-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOM'S CUE & BREW
Employer

OC: 08/01/10
Claimant: Respondent (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Tom's Cue & Brew (employer) appealed an unemployment insurance decision dated September 1, 2010, reference 01, which held that Julissa Herralld (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 28, 2010. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Janell Mikkelson, Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time bartender from October 7, 2009 through July 23, 2010 when she was discharged for repeated theft. The employer found the change bag \$40.00 short on July 8, 2010. When the manager confronted the claimant about it, the claimant simply handed over \$40.00 and offered no explanation. The employer was \$100.00 short in the register on July 11, 2010 and \$130.00 short in the register on July 13, 2010. The manager confronted the claimant about the shortages on July 16, 2010 and again the claimant offered to pay back the money. The manager told the claimant she was not going to tolerate any more shortages.

The employer was \$150.00 short in the register and \$100.00 short in the change bag on July 22, 2010. The manager discharged her on July 23, 2010 and the claimant said nothing in response. She never denied taking the money.

Iowa Workforce records document the claimant was overpaid \$4,200.00 in unemployment insurance benefits for the 20-week period ending March 20, 2010 due to her failure to report

wages from the employer herein. She filed a new claim effective September 1, 2010 but has not received any benefits as a result of this claim.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on July 23, 2010 for repeated theft after being warned. When confronted about the first three incidents, the claimant never admitted taking the money but simply paid it back or offered to pay it back. She knew any further incidents would result in her termination but she misappropriated funds again one week later. The claimant's theft shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated September 1, 2010, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. There is no overpayment as a result of this decision.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs