

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER L JENKINS
Claimant

APPEAL NO: 13A-UI-05938-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 04/21/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 8, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice, or participate in the hearing. Dean Habhab, the general manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2012. She worked full time, 32 to 40 hours a week, as a shift lead. The employer's policy informs employees they are not to do a Western Union transaction by phone.

On April 18, 2013, the claimant was working and it was very busy at work. While she was busy, a person called to make a Western Union transaction over the phone. The claimant did not realize this was a scam and started the Western Union transaction. This allowed the scam artist to withdraw \$950.00. The claimant did this without thinking.

On April 19, the claimant reported to Habhab what she had done. Habhab considered the claimant a very good employee, but had to report the incident to the corporate office. Habhab tried to keep the claimant as an employee, but corporate management decided to discharge the claimant because this was the employer's policy for this policy violation. The employer discharged the claimant on April 19, 2013.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a.

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's job was not in jeopardy before the April 18, 2013 incident. On April 18, the claimant was negligent and violated the employer's Western Union policy. The claimant used poor judgment when she was very busy and did not think. Based on the facts of this case, the employer had justifiable business reasons for discharging the claimant, but she did not commit work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's May 8, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits, provide she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css