

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KENDRA CARROLL**  
Claimant

**INTERCULTURAL CENTER OF IOWA**  
Employer

**APPEAL 19A-UI-01773-LJ**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/13/19**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
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:**

The employer filed an appeal from the February 21, 2019, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer failed to establish the discharge was for willful or deliberate misconduct. The parties were properly notified of the hearing. An in-person hearing was held in Cedar Rapids, Iowa, on Thursday, May 16, 2019. The claimant, Kendra Carroll, participated. The employer, Intercultural Center of Iowa, participated through Rama Muzo, CEO. English/American Sign Language interpreter Amy Cook of Deaf Services Unlimited provided interpretation services for the hearing. Claimant's Exhibits A, B, C, and D and Employer's Exhibits 1 and 2 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a client support specialist and SSP, from July 19, 2018, until December 6, 2018, when her employment ended.

As a client support specialist, one of claimant's job duties was to help clients complete tasks and errands. In order to do things like grocery shop for a client, claimant would need to acquire the client's debit card from the employer. The employer kept clients' debit cards in a lockbox contained within a locked office. Claimant would need to contact Muzo or another supervisory

employee to unlock this office so she could access the debit cards. After the errand was completed, claimant would then need to contact the employer to lock up the debit card again.

On November 26, claimant contacted Muzo to access client John Doe's debit card to help the client shop for groceries and renew his car registration. Claimant completed the grocery shopping task. However, she never helped the client renew his car registration. Claimant did not return the debit card to the employer. On November 29, the John Doe's sister contacted Muzo. She reported that John Doe's car registration still had not been renewed. Muzo told her that he would look into the situation.

On December 4, Muzo initially contacted claimant to inquire about the status of the car registration and the debit card. Claimant responded that she no longer had the debit card. On December 5, Muzo sent claimant an email stating she needed to bring the card back to the office by the end of the day. Claimant replied that she gave the card back to the bank, as John Doe had informed her that the employer was no longer his payee. Muzo responded that claimant did not have the authority to do anything with the debit card, as she was not an authorized payee of the organization. He then wrote,

I need to have the card by the end of the day or the letter from the bank stating you returned the card and indicating the date that card was returned. If you don't bring the card back by 4:30pm today and if I don't receive the [card] or the letter from the bank, I will [be] making the reporting to the police and pursuing other options.

(Exhibit 2) Claimant responded that John Doe and his sister had decided to have another person, Theresa, be Doe's payee. Muzo replied that she did not have the authority to do anything with the debit card other than to "help [John Doe] renew his license and meet his other support services." Muzo also reiterated his demand for the debit card or a letter from the bank by the end of the day. Claimant responded that the bank would not talk to her directly, as she was not on the bank account at issue. Muzo then replied that he would be filing a police report.

On December 6, Muzo sent claimant a letter discharging her from employment. Muzo cited claimant's unauthorized holding of the debit card, her refusal to return the debit card, and her dishonesty when questioned about the debit card as the primary reasons for discharging her. (Exhibit B)

Also on December 6, claimant wrote a letter resigning from her employment effective immediately. Claimant stated she was resigning because of seven bounced payroll checks between February 7 and November 2, 2018. Muzo received this letter on or about December 10. At the time claimant resigned from her position, she thought it was a possibility that her job was in jeopardy. Muzo does not dispute that these checks bounced. He explained that as a new non-profit organization funded by the government, the employer initially struggled financially. Frequently, the government was delayed in getting funding to the employer, so the employer in turn could not meet its financial obligations.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,519.00, since filing a claim with an effective date of January 13, 2019, and a reopened claim date of February 24, 2019, for the eleven weeks ending May 11, 2019. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a first-hand witness available for rebuttal.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Alternatively, claimant quit her employment without good cause attributable to the employer. Benefits are withheld.

### Discharge from Employment:

The employer contends it discharged claimant from her employment. 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all,

part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's testimony more credible than claimant's testimony. Claimant was frequently evasive in answering questions, particularly when the administrative law judge and Muzo asked her about the timeline of events regarding the debit card. In contrast, Muzo presented a reasonable, straightforward timeline of events that is consistent with the documentation provided.

Claimant was discharged from employment for a series of dishonest and untrustworthy acts. First, claimant improperly failed to return John Doe's debit card when she was finished assisting John Doe with his tasks. Second, claimant failed to voluntarily disclose to the employer that she had kept John Doe's debit card. Third, claimant acted outside the scope of her job responsibilities when she took John Doe's debit card back to the bank, rather than returning it to the employer as she was supposed to do. Muzo could not continue to employ claimant, as he could not trust her to handle client property in a trustworthy and appropriate manner. Claimant's behavior was in deliberate disregard of the employer's interests, and it amounts to disqualifying misconduct, even without a prior warning. The employer has met its burden of proving that claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

**Quit from Employment:**

Alternatively, claimant contends she quit her employment. Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer: ...

- (28) The claimant left after being reprimanded.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in

particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

The administrative law judge is persuaded that claimant did not quit her job due to the employer's bounced payroll checks. In this case, the employer admits that several of claimant's payroll checks bounced due to funding issues. However, it disputes that these bounced checks were the actual reason for claimant's decision to quit her job. The evidence in the record indicates claimant knew why the checks were bouncing and the employer worked with her to minimize any adverse impact on her bank account and credit. Additionally, the employer last bounced one of claimant's weekly payroll checks in early November. Had this been the actual reason claimant quit, the administrative law judge believes she would have done so in close proximity to a check bouncing. The evidence shows that claimant did not quit until she believed the employer was going to discharge her. Once claimant learned that her job was in jeopardy, through the employer's statement that it was going to call the police regarding John Doe's debit card, she decided to quit.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Claimant sent the employer a resignation letter stating she was quitting her job effective immediately. Claimant has not established that she quit because of a good-cause reason attributable to the employer. Therefore, under either analysis, benefits must be withheld.

**Overpayment, Repayment, and Chargeability:**

The next issues to be determined are whether claimant has been overpaid benefits, whether the claimant must repay those benefits, and whether the employer's account will be charged. Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) (a) 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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in [871—subrule 24.32\(7\)](#). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did not participate in the fact-finding interview the claimant is not obligated to repay to the agency the benefits she received and the employer's account shall be charged.

**DECISION:**

The February 21, 2019, (reference 01) unemployment insurance decision is reversed. 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. The claimant has been overpaid unemployment insurance benefits in the amount of \$2,519.00 and is not obligated to repay the agency those benefits. The employer did not participate in the fact-finding interview and its account shall be charged.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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