

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KIM R BERTELSEN

Claimant

APPEAL NO: 19A-UI-00476-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LONE MOUNTAIN TRUCK LEASING LLC

Employer

OC: 12/16/18

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 10, 2019, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 1, 2019. The claimant participated in the hearing with Attorney Michael Winter. Stephanie Taylor, Accounting Manager and Alexander Morsey, Human Resources Business Partner, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time accounts payable clerk for Lone Mountain Truck Leasing from May 29, 2012 to December 7, 2018. She was discharged for work performance issues.

On September 20, 2018, the claimant received a written warning because the employer received notices from the Internal Revenue Service regarding 2017 1099 filings because multiple vendors were missing tax identification numbers. The employer imposed a November 1, 2018, deadline to correct the situation. The employer also met with the claimant weekly between September 20 and November 1, 2018, so the employer could assess the claimant's progress and the claimant could ask questions of the employer.

On November 5, 2018, the claimant received a written warning for failing to meet the November 1, 2018, deadline of completing the tax identification numbers. The claimant had done approximately 68 of the 80 missing tax identification numbers.

On November 20, 2018, the employer had a performance meeting with the claimant to discuss her communication and lack of organization, accuracy, prioritization, failure to meet deadlines and not taking ownership of her work.

Following the November 20, 2018 meeting, the employer cited several performance based issues on the part of the claimant. On November 27, 2018, Accounting Manager Stephanie

Taylor told the claimant the employer did not need to ask every vendor for an updated W-9 form. The claimant sent an email suggesting the employer no longer pay vendors until it received updated W-9 forms. Ms. Taylor emailed the claimant and explained they did not need to do that and the claimant did not respond. Also on November 27, 2018, Ms. Taylor noted checks being requested outside of accounts payable without question. On November 28, 2018, the claimant asked a question about open product orders being closed or edited in a previous month and the employer felt that after working there for five years she should have known the answer. Also on November 28, 2018, the claimant failed to provide Ms. Taylor with updated W-9/1099 numbers. On November 29, 2018, during an accounts payable check selection, Ms. Taylor saw a vendor she did not recognize. Upon further investigation, Ms. Taylor found the account was not marked as a 1099 vendor even though the employer had been using the vendor since June 12, 2018. Also on November 29, 2018, Ms. Taylor noticed tasks on the claimant's daily list that had already been completed.

On December 4, 2018, the claimant made a duplicate payment which resulted in an overpayment instead of completing two separate invoices. The claimant asked Ms. Taylor about voiding the invoice. Ms. Taylor instructed the claimant to contact the client and have it apply the overpayment from one invoice to another and then create a credit memo to the invoice the employer paid. The claimant failed to do so and the employer had to cut a check creating a duplicate payment. That was the final incident for the employer and on December 7, 2018 it terminated the claimant's employment for poor job performance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *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 substantial and 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 claimant was not meeting the employer's expectations and the employer had the right to terminate her employment. The question is whether the claimant's actions constitute disqualifying job misconduct. While the claimant made several mistakes, none appear to be intentional. She tried to comply with the employer's directives and improve her performance following her written warnings but her performance did not meet the employer's standards. The employer took issue with the claimant's ability to meet deadlines, her communication skills, organization, prioritization, accuracy, failure to ask questions for clarity and failure to take ownership of her work. It is not misconduct if the claimant lacks the ability to perform the job to the employer's expectations and given the laundry list of shortcomings the employer listed, it is apparent the claimant could not meet the employer's standards. Consequently, the administrative law judge must conclude the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The January 10, 2019, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn