IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

DONNA K SNYDER Claimant **CHAMPION FORD** Employer	**APPEAL 17A-UI-04512-NM-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/02/17** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 21, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for failure to follow instructions in the performance of her job. The parties were properly notified of the hearing. A telephone hearing was held on May 18, 2017. The claimant participated and testified. Claimant's non-attorney representative Jim Snyder also participated on her behalf. The employer did not participate.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a service advisor from February 2, 1999, until this employment ended on April 4, 2016, when she was discharged.

In October 2016, Service Manager Maureen Castaldi took over as claimant's supervisor. When she assumed her position, Castaldi instituted a policy change that required employees to write estimates for work on the front of customer tickets and to have the customer sign off on all estimates in order to comply with Iowa law. Claimant was accustomed to writing estimates on the back of the ticket and it took a while for the new procedure to catch on for her. Claimant was given a written warning for failing to follow the proper procedure by writing the estimates on the front, rather than the back, of tickets in December 2016. This warning included a general advisement that failure to improve could result in termination. Claimant focused on doing things the way Castaldi wanted, in accordance with the new procedure, and thought she was improving.

On April 4, 2017, claimant was notified that she was being discharged for failing to properly follow the procedure for writing estimates. Claimant was presented with 11 different tickets where she wrote the estimate on the back of the ticket instead of the front. All 11 incidents had occurred since receiving her written warning. The most recent ticket, dated March 24, 2017,

was also missing a customer signature, as the customer had not come in to drop the vehicle off. Claimant testified she was surprised by the decision to terminate her employment, as she believed she had been doing better and had not been spoken to about this issue by the employer since the December warning.

REASONING AND CONCLUSIONS OF LAW:

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

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 in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant had worked for the same employer since 1999. In October 2016 the procedure she had been following for writing tickets changed. Claimant attempted to follow the new procedure, but would sometimes revert to the way she used to do things. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

Claimant was warned once about properly following the estimate writing procedure in December 2016. Though the December warning advised claimant that failure to improve would result in termination, she reasonably believed she had improved, as she had not heard anything to the contrary from the employer. Claimant was allowed to make the same mistakes 11 more times before actually being terminated, but was not made aware of these mistakes until the time of her termination. Thus, claimant reasonably believed her conduct was acceptable to employer. Inasmuch as employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The April 21, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill
Administrative Law Judge

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Decision Dated and Mailed

nm/scn