

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIFFANY ANDERSON
Claimant

APPEAL 20R-UI-05170-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTENE MANAGEMENT COMPANY LLC
Employer

**OC: 02/09/20
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On March 10, 2020, the claimant filed an appeal from the March 9, 2020, (reference 02) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was scheduled for April 22, 2020. Claimant did answer at the telephone number provided for the hearing and the appeal was dismissed. Claimant filed an appeal with the Employment Appeal Board (EAB). The EAB remanded the case for a new hearing. A hearing was scheduled for July 2, 2020. The parties were properly notified of the hearing. Claimant participated in the hearing. Employer did not register for the hearing and did not participate. Claimant's Exhibit A was received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Was the claimant overpaid unemployment insurance benefits?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in March 2019. Claimant last worked as a full-time customer service representative. Claimant was separated from employment on February 7, 2020, when she was terminated.

Employer is a Medicaid managed care organization (MCO). As a customer service representative, claimant handled between 30 and 50 incoming calls per day from members and providers.

Claimant was not properly trained at the beginning of her employment. Employer did not train claimant on how to take calls from providers and only provided her with partial training on how to take calls from members.

Employer has a policy requiring employees to verify a caller's identity by verifying first and last name, date of birth, and other personal identifying information. Claimant was aware she was required to verify a caller's identity, but was not aware she had to do so in a certain order or fulfill all requirements before releasing any information to a caller.

Claimant also had a medical condition which made it difficult to be alert and concentrate during all times she was working. Employer was aware of the condition.

According to employer's policy, an employee could have up to six infractions of failing to properly verify identity prior to termination. The infractions fell off every 90 days.

Prior to her termination, claimant had been given four warnings about instances where she failed to properly verify a caller's identity. When given the warnings, employer allowed claimant to listen to the phone call so she could hear and verify the mistake that was made.

On February 7, 2020, call center manager, Robert Higbee, met with claimant and informed her that she had at least six infractions of properly verifying identity and he would have to terminate her employment. Higbee did not give claimant the date or details of the infractions or allow claimant to listen to the alleged phone call(s) where the last two alleged infractions occurred.

Claimant has received unemployment insurance benefits and Federal Pandemic Unemployment Compensation while waiting for an appeal hearing.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 is not 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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this case, claimant acknowledges that in previous cases, she failed to properly identify a caller's identity prior to releasing information. Claimant was disciplined for those incidents. Employer did not participate in the hearing and did not provide any evidence establishing claimant actually violated its policy after the last instance of discipline and prior to her termination. Employer did not provide any details regarding the alleged conduct, even though claimant asked for them. Therefore, claimant was also unable to identify the alleged conduct for which she was terminated and verify whether she engaged in the conduct.

Employer has the burden to prove it terminated claimant for a current act of misconduct, and in this case, it failed to do so.

Because claimant is allowed regular unemployment insurance benefits, there is no overpayment and she is also allowed Federal Pandemic Unemployment Compensation. See PL 116-136, Sec. 2104(b).

DECISION:

The March 9, 2020, (reference 02) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



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July 13, 2020
Decision Dated and Mailed

cal/scn