

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DELORES F ENNIS
Claimant

MARKETLINK INC
Employer

APPEAL 15A-UI-04694-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/15/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 17, 2015, (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on April 20, 2015. The claimant participated through Christopher Merkle, intern for Iowa Legal Aid. Shellie Mackel, attorney at law, was an observer. The employer participated through Shaylene Houston. Employer exhibits one through four were received and claimant exhibits A and D were received.

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: The claimant was employed full-time as a telephone sales representative and was separated from employment on April 6, 2015, when she was discharged for insubordination.

The employer has a progressive discipline policy that applies to most violations of employer rules and procedures (Claimant Exhibit A). However, as part of its policies, the employer also reserves the right to bypass progressive discipline for certain violations including insubordination (Employer exhibit one). The claimant was made aware of both of these policies, contained with pages 23 and 24 of the employer's handbook, on February 11, 2014, around the time of her hire (Employer exhibit two). As part of the employer's procedures, the claimant was also made aware of the employer's pay scale, which could be adjusted monthly, based upon an employee's performance during the prior month (Employer exhibit three).

On April 2, 2015, the claimant was presented a personnel change notice (PCN) for her signature (Employer exhibit four) from Lisa Pierce. The PCN was for an increase in pay from \$7.65 to \$7.90 hour. The claimant refused to sign the PCN form. Ms. Pierce discussed the situation with Bob Beaman, who helped in preparing a warning for insubordination, as a result of the claimant's refusal to sign the PCN form. When Mr. Beaman and Ms. Pierce discussed the PCN form with the claimant, she did not sign it, and was presented the warning form, which she

also refused to sign (Claimant exhibit D). The employer warned the claimant that if she refused to sign the warning form, she would be fired. The claimant elected not to sign the PCN form, or the warning, in light of being advised of the immediate consequence, and was discharged.

At the hearing, the claimant offered two explanations for her non-compliance. She stated the employer would take whatever action they wanted, regardless of her signature, as they had in the past, when they adjusted her pay due to performance as she refused to sign the document acknowledging the pay cut was forthcoming in the past; and that by signing a warning for insubordination, she was admitting guilt.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

At hand, are two instances, where the claimant was advised to acknowledge forms by the employer, and she refused. The claimant had historically signed documents when requested by the employer without issue, as reflected in her handbook acknowledgement and pay scale acknowledgement (Employer exhibits two and three). In this case, the claimant was being offered a raise, and the employer explained to her, that her signature of the PCN was an acknowledgment of the change in pay. Most employees would be pleased with a raise in pay and it is unclear why the claimant would be upset about an increase. The employer was reasonable in making the claimant aware that her pay scale would be adjusted, and asking that she acknowledge the receipt of this information, so there was no unpleasant surprise at the time of her forthcoming paycheck. Even if the claimant had been unhappy in the past with her pay reductions, which occurred regardless of her receipt, the claimant failed to offer a reasonable explanation for her failure to sign the April 2, 2015 PCN form.

As a result of her failure to sign the PCN form, as directed by the employer, the claimant then presented a warning for insubordination (Claimant exhibit D). The employer advised the claimant by way of Mr. Beaman and Ms. Pierce, that she was being issued the warning because of her refusal to sign her PCN form. The claimant responded by refusing to sign the warning form as well. The employer advised the claimant that if she failed to sign the warning, which clearly stated the reason for its issuance was due to the claimant's refusal to sign the PCN form, that she would be discharged. The claimant has failed to present persuasive evidence justifying her noncompliance with both requests to sign employer documents. The failure to acknowledge the receipt of a written reprimand by signing it constitutes job misconduct as a matter of law. *Green v. IDJS*, 299 N.W.2d 651 (Iowa 1980). In light of the employer advising the claimant of the consequences, she still refused to sign the warning and was subsequently discharged.

It cannot be ignored that both Ms. Pierce and Mr. Beaman testified, that the claimant was informed her signature of either the PCN notice or the warning was not in agreement of the contents, but rather an acknowledgement of receipt of both documents, which indicated a work related event had occurred. The employer has presented substantial and credible evidence that claimant refused to sign both the PCN and warning after having been warned. This is evidence of deliberate conduct in violation of company policy, procedure, or prior warning. The employer's request was not unduly burdensome or unreasonable. Benefits are denied.

DECISION:

The April 17, 2015, (reference 02) unemployment insurance decision is affirmed. The 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs