IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SHAWN E IBBOTSON
Claimant

GOVERNMENT EMPLOYEES INSURANCE COMPANY
Employer

APPEAL NO. 17A-UI-12200-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/15/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Government Employees Insurance Company (employer) appealed a representative's November 16, 2017, decision (reference 01) that concluded Shawn Ibbotson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 18, 2017. The claimant participated personally. The employer was represented by Beverly Maez, Hearings Representative, and participated by Leslie Brown, Human Resources Compliance Specialist, and Justin Krogman, Sales Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 11, 2015, as a full-time sales representative four. The claimant signed for receipt of the employer's handbook when he was hired. He also signed annually for an electronic copy. On February 23, 2016, the employer issued the claimant a written warning because the employer believed the claimant was manipulating his calls to his advantage. The claimant denied the allegations. The employer notified the claimant that further infractions could result in termination from employment.

On July 6, 2017, the employer talked to the claimant about how he ran a motor vehicle report on a potential customer, found out the customer had a suspended license, and then rejected the application. The claimant told the employer that a previous supervisor told employees to be cautious in certain situations and run the reports. The claimant was not sure what he had done wrong. The employer wrote up a memo to place in the claimant's file. The claimant was not given a copy of the memo.

On August 1, 2017, the employer discovered that on July 26, 2017, the claimant asked a customer for a VIN number because the price quote is more accurate with the number. The

customer did not continue with the quote even though the claimant told the customer he could move on without the number. Around August 16, 2017, the employer discovered that on August 4, 2017, the claimant forgot to remove road-side assistance from a customer's policy at the customer's request. This was an added $.50 to $1.00 charge per month.

On August 29, 2017, the claimant did not get supervisor approval to exclude two youthful drivers that should be active. The claimant did not know he needed a supervisor's approval. On August 30, 2017, the claimant appeared to manipulate the risk by changing who was listed on the policy. On August 31, 2017, the claimant was collecting information about a nineteen-year old driver when the customer disconnected. The claimant was required to collect information about youthful drivers, fifteen to nineteen.

No further warnings were issued to the claimant. He continued to work through approximately September 15, 2017, when he took medical leave. On September 20, 2017, the claimant's sales manager recommended him for termination. The employer passed the recommendation from managers, directors, vice presidents, local human resource people, and corporate human resources people. On or about October 7, 2017, the employer decided to terminate the claimant. On or about October 11, 2017, the employer determined it was acceptable to terminate the claimant over the telephone. On October 17, 2017, the employer terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of October 15, 2017. He has received no benefits since his separation from employment. The employer participated personally at the fact finding interview on November 9, 2017, by Kelly Langden.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

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.

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 employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on August 31, 2017. The claimant was not discharged until October 17, 2017. The incident and the termination are too remote. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's November 16, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

_____
Beth A. Scheetz
Administrative Law Judge

_____
Decision Dated and Mailed

bas/rvs