

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHERI SADOWSKI
Claimant

CBE COMPANIES INC
Employer

APPEAL 21A-UI-11994-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/07/21
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 16, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she was discharged due to violation of a known rule. The parties were properly notified of the hearing. A telephone hearing was held on July 16, 2021. The claimant participated and testified. The employer participated through Human Resources Supervisor Lacy Scarborough, Operations Manager Daniel Gallaspey, and Supervisor Brent Garland. Exhibits 1, 2, 3, and 4 were received into the record.

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 worked as a collector for the employer from February 10, 2021, until she was separated from employment when she was discharged on March 10, 2021. The claimant's immediate supervisor was Brent Garland.

The employer has an employee handbook. Within that employee handbook is policy which states if an employee "receives three written warnings in six months," then they are to be terminated. It adds that the employer reserves the right to terminate an employee immediately for certain infractions. The employer provided a copy of this policy. (Exhibit 4) The employee handbook is accessible to each employee through the use of its intranet. The claimant also was also trained regarding verifying an individual's identity prior to discussing personal identity information (PII).

On September 3, 2020, the claimant inadvertently revealed taxpayer information to someone who had a limited power of attorney.

On October 2, 2020, Brent Garland issued the claimant a written warning. The written warning admonishes the claimant that she is to verify the person she is speaking to on the phone is authorized before revealing information to them. The written warning stated any further instances could result in further discipline up to and including termination. The employer provided a copy of the written warning. (Exhibit 1)

On October 9, 2020, the claimant left a message that did not conform to the script that she had been trained to use, which is called the Zortman message.

On October 14, 2020, the claimant received a written warning for not using the Zortman message on October 9, 2020. The warning stated that “any additional written warning received before April 2, 2021 would result in termination.” The employer provided a copy of this written warning. (Exhibit 2)

On March 5, 2021, the claimant informed Mr. Garland that she believed she inadvertently disclosed taxpayer information to an individual with power of attorney but who was not authorized to receive that information.

On March 10, 2021, Manager of Operations Megan Dean and Garland terminated the claimant for what occurred on March 05, 2021. The termination notice formulaically states the claimant received three written warnings, so she must be terminated. The employer provided a copy of the termination notice. (Exhibit 3)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to non-disqualifying conduct.

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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:

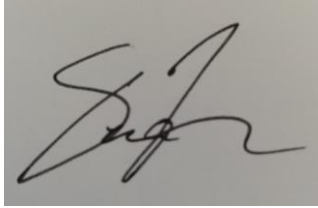
(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The claimant contends and the administrative law judge agrees that she was not terminated in accordance with the policy. The policy itself and the claimant's final warning state that the receipt of three written warnings must occur within a six month timeframe. While the employer's witnesses contend that the claimant's infraction date is the one that matters, the plain meaning of the words in both suggest otherwise. However, this is not the reason that the employer has not met its burden in this case.

The employer terminated the claimant for something that had occurred seven months after the infraction occurred. As a result, it cannot show it terminated her for a current act and so the employer's cannot satisfy the rule in Iowa Admin. Code r.871-24.32(8). Benefits are granted.

DECISION:

The April 16, 2021, (reference 01) unemployment insurance decision is reversed. The claimant was terminated for non-disqualifying conduct. Benefits are granted.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'S. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

July 30, 2021
Decision Dated and Mailed

smn/lj