

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMPSON NAGBE

Claimant

APPEAL 21A-UI-08597-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RYDER INTEGRATED LOGISTICS INC

Employer

OC: 11/15/20

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation in Fact-Finding
Public Law 116-136, sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On March 22, 2021, the employer filed an appeal from the March 11, 2021 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer failed to establish the discharge was for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephonic hearing was held at 11:00 a.m. on Wednesday, June 9, 2021. The claimant, Thompson Nagbe, participated. The employer, Ryder Integrated Logistics, Inc., participated through Katie Harris, Logistics Manager/Operations Manager. Employer's Exhibit 1 was received and admitted into the record over objection. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the employer discharge the claimant for disqualifying, job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?
Has the claimant been overpaid Federal Pandemic Unemployment Compensation benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a material handler and forklift operator, from May 11, 2020, until November 17, 2020, when he was discharged for violating the employer's cell phone policy.

The final incident that led to claimant's discharge occurred on November 13, 2020. That day, claimant had been on break using his cell phone. He was in a hurry to return to work, so he walked from the break room to his forklift while still holding his cell phone. He then placed his

cell phone in his pocket. Harris witnessed this activity, and she immediately called claimant into her office. Harris asked claimant where his cell phone was, and he pulled it out of his pocket.

The employer maintains a written policy stating that cell phones are not permitted on the warehouse floor. (Employer's Exhibit 1) Claimant received a copy of this policy, and he signed off on the policy, indicating he understood it. The employer disciplines violations of this policy with immediate discharge, due to the "serious privacy, risk, and safety concerns" posed by violations.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,968.28, since filing a claim with an effective date of November 15, 2020, for the twenty-one weeks ending April 10, 2021. Claimant also received a total of \$4,500.00 in Federal Pandemic Unemployment Compensation benefits during this time period. The administrative record also establishes that the employer did participate in the fact-finding interview. Harris did not personally participate in the fact-finding interview, but she believes someone else did. The fact-finder told Nagbe that she had spoken with the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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).

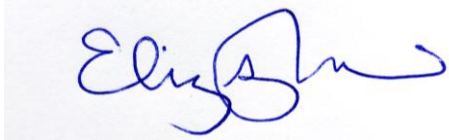
In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all, provided the discharge is not contrary to public policy. However, if the employer fails to meet its burden of proof to establish job related misconduct as the reason for the separation, 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.

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. Here, claimant came onto the warehouse floor with his cell phone in his pocket. He did not use his cell phone on the warehouse floor, and there is no indication that claimant's conduct on November 13 put himself or anyone else in any danger. The conduct for which claimant was discharged was merely an isolated incident of poor judgment. As the employer had not previously warned claimant about the issue leading to the separation, it 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.

As claimant is allowed benefits based on this separation from employment, the issues of overpayment, repayment, and chargeability are moot at this time.

DECISION:

The March 11, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.



Elizabeth A. Johnson
Administrative Law Judge
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June 22, 2021
Decision Dated and Mailed

lj/mh