

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ASHLEY N BUTCHER**  
Claimant

**AMERICAN HOME SHIELD CORP**  
Employer

**APPEAL 16A-UI-06112-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/12/15**  
**Claimant: Respondent (2R)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the May 23, 2016, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 17, 2016. Claimant participated. Employer participated through human resource manager, Amy Platt, and service resolution supervisor, Sara Kitt, and was represented by Raul Ybanez. Employer's Exhibit 1 was received.

**ISSUES:**

Was the claimant discharged 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?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer as a service resolution specialist on August 19, 2015. Claimant was terminated on May 4, 2016.

As a service resolution specialist, claimant was responsible for handling customer complaints. After looking into a specific complaint, claimant was required to follow up with the customer via email or telephone pursuant to insurance guidelines. Claimant was then required to document that conversation in employer's computer system. Claimant was aware of this procedure and these requirements.

On April 25, 2016, claimant asked supervisor, Sara Kitt, for help with a customer complaint on a coverage decision. On April 28, 2016, employer confirmed the coverage decision would stand. At that point, claimant was required to follow up with the customer. On April 29, 2016, Kitt checked the computer system for notes on the conversation with the customer as Kitt was concerned about the customer's reaction. There was no documentation of claimant speaking

with the customer, so Kitt emailed claimant asking whether she had done so. On May 2, 2016, claimant responded to Kitt via email stating she had a telephone conversation with the customer and must have forgotten to document it. Kitt reviewed the telephone records during the time frame claimant claimed to have contacted the customer. There was no record of claimant calling the customer.

On February 12, 2016, claimant was given a final, written warning for falsifying her time card.

Employer terminated claimant on May 4, 2016, for being dishonest after being warned.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,436.00, since separating from employment on May 4, 2016, for six weeks until the week ending June 11, 2016. The administrative record also establishes that the employer did participate in the fact-finding interview.

### **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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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 does not constitute 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).

The employer has presented substantial and credible evidence that claimant was intentionally dishonest with employer after having been warned. This is disqualifying misconduct.

#### **DECISION:**

The May 23, 2016, (reference 02) unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant is deemed eligible.

#### **REMAND:**

This matter is remanded for a calculation of the amount claimant has been overpaid unemployment benefits based on this disqualification.

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Christine A. Louis  
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Decision Dated and Mailed

cal/pjs