

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**BRANDI G CHAPIN**  
Claimant

**APPEAL 16A-UI-07882-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLEMONS INC OF OTTUMWA**  
Employer

**OC: 06/19/16  
Claimant: Respondent (1)**

---

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 July 13, 2016, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 5, 2016. Claimant participated. Employer participated through administrative office assistant Bobbi Coffman and chief financial officer Sherry Smith. Employer exhibit one was admitted into evidence with no objection.

**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 was employed full-time as a title clerk from April 16, 2014, and was separated from employment on June 21, 2016, when she was discharged.

Claimant was discharged on June 21, 2016, because the employer believed she was costing it money. The employer did not believe claimant was performing her duties as she was supposed to and it was causing penalties from the Iowa Department of Transportation and financial institutions.

The final incident occurred after the employer received a phone call from the Jefferson County Treasurer Office on June 21, 2016 that there were three deals that had penalties that had not been taken care of (had not been paid) after they had spoken to the claimant. Ms. Coffman contacted the Jefferson County Treasurer's Office and asked what happened. Claimant

testified she does not recall the Jefferson County Treasurer Office calling a couple of weeks prior to her discharge. Claimant was not aware of any errors that needed to be corrected for Jefferson County. Claimant was responsible to correct errors, including investigating the error and sending any informant or checks. After Ms. Coffman took the call, she spoke with Ms. Smith about what had happened and that claimant had not paid the penalties. Because of claimant's prior warning, the employer decided to discharge her.

Claimant testified she was not purposefully making errors; she knew she was not supposed to be making errors and she tried not to make errors. The employer believed that after the warning, claimant was purposefully not doing things correctly. Claimant thought she was able to do the job with the training she had, but she had not been trained on how to handle customer's calls. Claimant did return courthouse phone calls and she tried to call customers back once she figured out what was the problem. There was one occasion when claimant left for an appointment and did not call a customer back; she also did not tell anyone at the employer. Claimant did make errors, which the employer had to pay for late fees or penalties. Employer Exhibit One.

On May 18, 2016, the employer gave claimant a written warning for not following through with car deals and not calling customers back. Employer Exhibit One. Claimant signed for the warning and was warned that her job was in jeopardy. Employer Exhibit One. Claimant told the employer that she had never spoken to the customers and that she had taken care of all of the deals she knew about. Claimant received multiple verbal warnings about not following through with car deals and not calling customers back, but they were not documented in writing. Claimant did not have a problem while she was training with Ms. Coffman and after, but around March 2016, claimant's performance went downhill. Claimant took the job as title clerk in December 2015, but gave it back in February 2016 because she could not handle the stress. In March 2016, claimant told the employer she wanted to try the title clerk position again.

#### **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.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit submitted. When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to

the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. This administrative law judge finds claimant's version of events to be more credible than the employer's recollection of those events.

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).

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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(5) provides:

Discharge for misconduct.

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

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). 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *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). Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it 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. Claimant was discharged for poor job performance, including not processing paperwork correctly or returning phone calls. Claimant admitted that there was one occasion where she did not call a customer back before she left work and did not inform the employer. Although the employer presented testimony from Ms. Coffman and Ms. Smith and evidence (checks) that it believed claimant was purposefully not performing her job duties, the employer did not present any customer(s) or business(es) (e.g., Jefferson County Treasurer Office) to testify and the employer did not present sufficient evidence that the mistakes on the paperwork resulting in fines/penalties were purposely made by claimant. However, claimant presented direct, first-hand testimony that she

was returning phone calls and was doing her best to process the paperwork correctly. Furthermore, claimant testified she did not recall receiving a phone call from the Jefferson County Treasurer's office a couple of weeks prior to discharge.

Claimant may have been making mistakes on paperwork that cost the employer money in fines or penalties, but no evidence was presented that her mistakes were purposeful. The employer only presented evidence that the mistakes were happening. Furthermore, claimant presented direct, first-hand testimony, that she was returning phone calls. Without a showing of intent, the employer has failed to establish disqualifying job misconduct. 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). Benefits are allowed.

As benefits are allowed, the issues of overpayment, repayment, and the chargeability of the employer's account are moot.

**DECISION:**

The July 13, 2016, (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

---

Jeremy Peterson  
Administrative Law Judge

---

Decision Dated and Mailed

jp/pjs

**NOTE TO EMPLOYER:**

If you wish to change the address of record, please access your account at: <https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

[http://www.youtube.com/watch?v=\\_mpCM8FGQoY](http://www.youtube.com/watch?v=_mpCM8FGQoY)