

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY J WARWICK
Claimant

APPEAL NO. 08O-UI-08843-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYRVET INC
Employer

**OC: 05/25/08 R: 02
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 23, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 20, 2008. Claimant participated. Employer participated through Alicia Jaime, controller, and Lori Stewart, sales manager.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time customer service representative (CSR) from June 27, 2007 until May 30, 2008, when he was discharged for making unspecified multiple mistakes on orders (ship to address, quantity, item number) throughout the employment. Employer did not point out the final errors to him or at hearing. He was last warned on May 15 about not correctly handling a phone call from an employee to Jaime. He transferred the call to her voice mail because she was not in her office and he had not been told to do otherwise before that. He had a warning in September 2007 for internet usage and did not do so again thereafter. Warnings about mistakes were issued on February 20, March 3, and March 18, 2008; and with respect to each mistake, Stewart showed him a copy of the error and how to correct it. He had no warnings about cell phone usage and used it during personal time. He also observed Stewart using her cell phone while working to speak to her children. Claimant has an epileptic condition that does not always manifest in a seizure but he has "spells" when he is unable to communicate clearly and believes that may have contributed to mistakes but did not indicate that to employer when warned, retrained, or corrected, although Stewart was generally aware of the condition. Some errors were due to miscommunication and difficulty understanding warehouse manager Jose's accent. Throughout the employment Stewart had to double check his work so as to avoid errors even though claimant claimed he had double and triple checked his work using other information available to claimant such as the customer's call record, fax, or e-mail. Employer believed these errors to be careless rather than deliberate and

thought him to be a quick study and bright but observed he worked fast so he could get done early to have personal time to himself. In response to warnings or demonstrated mistakes, he was concerned and apologetic and said he would try harder. Although he had no way to look up product item numbers if they were not in the catalog and could not ask warehouse workers for information, he eventually quit asking Stewart for assistance because of her demeanor toward him when he went to her for assistance. He did not believe he had proper training on parts and products and was not allowed to go into the warehouse but was only trained on order entry, which would not have helped with ship to or quantity errors. There is no log in password, identification, or employee number on the forms to establish that claimant was the person responsible for the errors.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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.

871 IAC 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 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. Since there was no method of identifying claimant as the person who made the mistakes and no details were provided about the most recent mistakes attributed to claimant, employer has not established a current or final act of misconduct. Benefits are allowed.

DECISION:

The June 23, 2008, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw