

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEPHANIE GEORGE

Claimant

APPEAL NO. 20A-UI-01879-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION

Employer

OC: 01/19/20

Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 21, 2020, reference 01, decision that allowed benefits to the claimant provided she met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on January 10, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on March 18, 2020. Claimant Stephanie George did not provide a telephone number for the hearing and did not participate. Chris Hunter of Employer's Unity represented the employer and presented testimony through Coral Erickson, Shenann Barnes, and Stacy Farmer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 5 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay overpaid benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Stephanie George was employed by Kinseth Hotel Corporation as a full-time, salaried Traveling Sales Manager until January 13, 2020, when the employer discharged her from the employment for falsifying documentation concerning the work she performed on behalf of the employer. Ms. George began her employment in July 2017 and was promoted to the Traveling Sales

Manager position in April 2018. Shenann Barnes became Senior Regional Sales Manager in October 2019 and became Ms. George's supervisor at that time. Ms. George's duties as Traveling Sales Manager involved selling hotel accommodations at the employer's 80 facilities to corporate groups and other groups. Ms. George was expected to maintain an 8:00 a.m. to 5:00 p.m., Monday through Friday, work schedule so that she would be available to interact with Kinseth clients and prospective clients during regular business hours. Ms. George did not have an assigned territory and instead traveled to wherever the employer needed her to go. Ms. George's Traveling Sales Manager duties involved ongoing interaction with Regional Sales Managers. Toward the end of Ms. George's employment, the employer invested extensive time and energy in transitioning business records to a new system required by the Hilton brand. These "backlogging" or transitioning duties were a significant component of Ms. George's duties toward the end of her employment.

The employer's decision to discharge Ms. George from the employment followed the employer's discovery on January 13, 2020 that Ms. George had been falsifying the Traveling Staff Payroll Allocation Schedules she was required to submit to the employer every two weeks. The concern came to light after Regional Director of Sales Stacy Farmer spoke to Ms. Barnes on January 10, 2020 regarding Ms. George's failure to make progress on work Ms. George was supposed to be completing on January 6, 2020 and subsequent days. That information prompted Ms. Barnes to compare the Payroll Allocation schedules Ms. George had submitted for the pay periods ending November 19, December 16, and December 31, 2019 with the record documenting the times and dates when Ms. George logged onto the computer system she needed to use to perform the "backlogging work." Ms. Barnes discovered 16 instances during the six weeks in question wherein Ms. George documented that she had put in an eight-hour regular work day of backlogging work despite logon records that indicated otherwise. On some of the days, Ms. George logged in at irregular hours inconsistent with her work hours. In other instances, Ms. George did not log in at all. When Ms. Barnes contacted Ms. George on January 13, 2020 to discuss the discrepancy in the records, Ms. Barnes began by asking Ms. George about backlogging work Ms. George had recorded for December 18. Ms. George stated that she had performed backlogging work that day. When Ms. Barnes told Ms. George that the employer's records showed that Ms. George did not log in on December 18, Ms. George went quiet and said, "I'm sorry." Ms. Barnes then notified Ms. George that she was discharged from the employment for falsifying her time reports and the associated theft of company time.

Ms. George established an original claim for benefits that was effective January 19, 2020 and received \$2,886.00 in benefits for the period of February 2, 2020 through March 14, 2020. Kinseth Hotel Corporation is the sole base period employer in connection with the claim. On February 19, 2020, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Ms. George's separation from the employment. Coral Erickson of Employer's Unity participated in the fact-finding interview call on behalf of the employer. Ms. Erickson provided a statement outlining the basis for the discharge. The employer had provided for the fact-finding interview the same exhibits that were received into evidence in connection with the appeal hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4).

The evidence in the record establishes a January 13, 2020 discharge for misconduct in connection with the employment. Ms. George's repeated falsification of the Travel Staff Payroll Allocation Schedule documentation she submitted as documentation of the work she performed

on behalf of the employer demonstrated an intentional and substantial disregard of the employer's interests. The employer reasonably expected Ms. George to submit accurate documentation to ensure work was performed as assigned. Ms. George's intentional dishonesty during the January 13 meeting also demonstrated an intentional and substantial disregard of the employer's interests. The employer reasonably expected Ms. George to deal with the employer in an honest manner. Given the nature of Ms. George's position, it was especially important that the employer be able to trust Ms. George. Ms. George's conduct fundamentally undermined that trust relationship. The weight of the evidence indicates further conduct contrary to the employer's interests through the theft of time. Through her fraud, Ms. George was paid for time when she was not performing work on behalf of the employer. Ms. George is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible for benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Ms. George received \$2,886.00 in benefits for the period of February 2, 2020 through March 14, 2020, but this decision disqualifies her for those benefits. Accordingly, the benefits Ms. George received constitute an overpayment of benefits. Because the employer participated in the fact-finding interview within the meaning of the law, Ms. George is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

DECISION:

The February 21, 2020, reference 01, decision is reversed. The claimant was discharged for misconduct in connection with the employment. The discharge was effective January 13, 2020. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements.

The claimant is overpaid \$2,886.00 in benefits for the period of February 2, 2020 through March 14, 2020. The claimant must repay the overpaid benefits. The employer's account shall be relieved of charges for benefits, including liability for benefits already paid to the claimant.



James E. Timberland
Administrative Law Judge

March 27, 2020
Decision Dated and Mailed

jet/scn