

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA RHODES
Claimant

APPEAL NO. 12A-UI-02036-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TM1 STOP LLC
Employer

**OC: 1/15/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a fact-finding decision dated February 22, 2012, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice and an extended period of discovery, a telephone conference hearing was scheduled for and held on August 15, 2012. Claimant participated through attorney, Derek E. Johnson, Iowa Legal Aid. Employer participated by Holly Ralston, Manager of People Support and Administration. In addition, Bridgit Laur, Operations Manager and Jim Hunter, Center Director, participated as witnesses. Exhibits A through J were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant was discharged on January 19, 2012 by employer for entering inappropriate notations in an internal IT system, known as a regional billing system. On January 18, 2012, the claimant entered a notation in the regional billing system, which stated that a customer had been misquoted by a different vendor. Specifically, it stated "WAS MISQUOTED BY OK RETENTION CENTER THEY NEED TO BE RETAINED ON SAVES PROMOS BC SAVE-A-LINE IS NOT AVAIL IN CT XFER TO CHAD HORMIN IN OK ...". After this occurred, the employer's client, AT&T, demanded that the claimant be terminated for the notations. The employer terminated the claimant immediately thereafter.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the 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.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

The term "misconduct" under Iowa law may encompass many different types of conduct. The phrase "material breach of a worker's contract of employment" is significant. This phrase essentially means that the employer must prove the worker intentionally violated a reasonable

employment standard. The rule essentially anticipates two general types of misconduct under Iowa law, broadly categorized as universal misconduct and work rule misconduct.

Universal misconduct would include misconduct which any reasonable worker should reasonably know is a violation of any employer's work standards. Examples of this type of misconduct would include theft from the employer, initiating violence in the workplace without justification, intentionally damaging property and other intentional acts evincing a willful disregard for the employer's interest. In other words, any worker in the competitive job market should understand that they would be fired for such a violation regardless of whether a formal or specific work rule is in place.

"Work rule" misconduct would include reasonable standards or rules which an employer sets for its place of employment which a worker knowingly violates. In essence, it is a standard because the employer said it is. In such instances, the burden is upon the employer to demonstrate that it had a reasonable work rule, the worker was aware of the rule, and knowingly violated the rule. Examples of this type of "work rule" misconduct would include tardiness violations, violations of a cell phone use policy, and dress code violations. Importantly, different employers and different industries may have different reasonable work standards on these topics and acceptable behavior is often relative.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct. The employer argues strenuously that it set forth reasonable work standards which directed employees to refrain from making derogatory comments about other vendors on the regional billing system. The employer did have reasonable work standards set forth in Employer Exhibit J, however, the claimant's conduct in this case was reasonable and did not violate any of those standards. The claimant merely entered a correct notation that a rival vendor had made a mistake and needed to be retrained. The claimant simply did not violate the standards in the employer's rules by any normal reading of those rules.

DECISION:

The fact-finding decision dated February 22, 2012, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/css