

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JIM W THOMAS
Claimant

SEATON LLC
Employer

APPEAL 17A-UI-06169-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/07/17
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:

Seaton, LLC (employer) filed an appeal from the June 6, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Jim W. Thomas (claimant) was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 17, 2017. The claimant participated. The employer participated through Senior Account Manager Susan Murphy. The claimant offered an exhibit which was comprised of five pages of his written response to the employer's evidence. The claimant's proffered exhibit is not evidence and was not admitted into the record, although he was allowed to refer to his written notes while testifying. Employer's Exhibit 1 was received. Official notice was taken of the administrative record, specifically the fact-finding documents.

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: The claimant was employed full-time as a Lab Analyst beginning on January 3, 2017, and was separated from employment on May 2, 2017, when he was discharged. The employer requires employees to report to work six minutes before the start of their shift. Any employee who reports after that time is considered tardy. The employer also has a policy that prohibits insubordination.

On February 27, 2017, the claimant received and signed a Corrective Action Form. He was given the final warning for using his personal phone at work and issues he was having with the

Line Lead. The claimant was told he was to work in a professional manner and avoid confrontation in the workplace. Any additional issues could result in discharge.

On April 20, 2017, the claimant met with Account Supervisor Bill Lindholm about a warning being issued for tardiness. The claimant had been late the day before and Lindholm explained that the claimant was required to attend the production meeting. Lindholm asked the claimant to sign the warning and the claimant complied. Lindholm also gave the claimant a copy of the employer's policies.

On April 25, 2017, Lindholm approached the claimant with another warning related to tardiness. The claimant insisted to Lindholm that they had already discussed the tardiness issue and he understood his responsibilities from the conversation on April 20. The claimant had not had been tardy since the warning on April 20. Lindholm did not give the claimant the warning he was holding or ask the claimant to sign the warning.

On April 26, 2017, Senior Account Manager Susan Murphy learned the claimant had not signed the second warning and sent an email to Laura who runs the lab to ask about the claimant's job performance. Laura responded with performance issues the claimant had throughout his employment. Murphy made the decision to end the claimant's employment for refusing to sign the warning on April 25. The claimant had not received any warnings related to job performance throughout his employment.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,980.00, since filing a claim with an effective date of May 7, 2017, for the ten weeks ending July 15, 2017. The administrative record also establishes that the employer participated by providing written documentation that, without rebuttal, would have resulted in disqualification.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

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. 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 the 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." Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). 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 contends the claimant was discharged for failing to sign the warning he was given on April 25, 2017. The claimant denies he received or was told to sign a warning on April 25, 2017. The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the conversation on April 25, 2017. No request to continue the hearing was made. The employer did provide a written statement from Lindholm; however, that statement was taken on May 15, 2017, weeks after the incident occurred, and does not provide much detail of the conversation. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer. The employer has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. It has not established that the claimant was presented with a warning and asked to sign it. Accordingly, benefits are allowed.

As benefits are allowed, the issue of overpayment is moot. The employer is not currently in the claimant's base period and is not being charged for benefits. In the future, if the employer is part of the claimant's base period and the claimant has not requalified for benefits by earning ten times his weekly benefit amount in insured wages, the employer's account may be subject to charge.

DECISION:

The June 6, 2017, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. As benefits are allowed, the issue of overpayment is moot and if there are charges to the employer's account in the future based on this separation, they cannot be waived.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn