

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAREY A GALARZA
Claimant

APPEAL NO. 17A-UI-03589-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

OC: 02/19/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Carey Galarza (claimant) appealed a representative's March 22, 2017, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Kum & Go (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 26, 2017. The claimant participated personally. The employer participated by Erica Tietz, Senior Talent Acquisition Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 2, 2015, as a full-time quick service restaurant manager. At the end of her employment she was an hourly employee. The claimant signed for receipt of the employer's handbook and did not receive any warnings. The claimant was responsible for making some deposits at the bank. She understood she was to put the deposits into a zippered bag and go directly to the bank.

On February 13, 2017, the claimant had to go into work on her day off to take care of the employer's accounts. She clocked in, prepared the deposit, placed it in the zippered bag but did not close the zipper. The claimant clocked out and got in her car. She placed the bag between herself and the car door. While driving the short distance to the bank she received a call from her doctor with test results. The claimant turned left and pulled into an area by the middle school baseball fields so she could stop driving and take the call. She wanted to write down the information from the doctor so she opened the door to retrieve a pen from her purse in the back of her car. When she opened the door the deposit bag fell to the ground. The claimant discovered this when she stepped on the bag getting out of the vehicle. Money flew from the bag in the wind. The claimant immediately disconnected the call and tried to retrieve the money. She contacted the principal at the middle school to see if there was a camera recording that area of the ball field but there was not. On February 14, 2017, the claimant reported the

loss of \$577.00 and offered to reimburse the employer. The employer declined the offer and terminated the claimant on February 16, 2017, for carelessness.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

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). 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 Department of Job Service*, 391 N.W.2d 731 (Iowa App. 1986). Repeated unintentionally careless behavior of claimant towards subordinates and others, after repeated warnings, is misconduct. *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (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).

The employer did not provide any evidence of intent at the hearing. The claimant's actions appear to be an isolated instance of a good faith error in judgment. Consequently the employer did not provide sufficient evidence of job-related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's March 22, 2017, decision (reference 02) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs