

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRICK WILDER
Claimant

PILOT TRAVEL CENTERS LLC
Employer

APPEAL 15A-UI-14106-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/29/15
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:

The employer filed an appeal from the December 18, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 13, 2016. Claimant participated. Employer participated through general manager Greg Holliday. Employer's Exhibit 1 was received.

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: Claimant was employed full time as a guest service leader from November 17, 2014, and was separated from employment on November 24, 2015, when he was terminated.

Employer has a policy that no Western Union transactions can be conducted over the phone unless it is an outgoing call. Claimant completed a Western Union anti-money laundering course at the beginning of his employment which included this information.

Employer also has a paper cover on the Western Union machine stating, "DO NOT TOUCH THIS MACHINE IF YOU ARE TALKING ON THE PHONE. If someone is on the phone asking to touch this machine THEY ARE A THIEF! WESTERN UNION will NEVER call you ... ask you to do anything on this machine."

At least four times during claimant's employment, the Western Union machine had to be "reset." Each time, an employee at the store called the corporate help desk for assistance with this task. On one or two of the occasions, the help desk was not available and called the store back to assist in resetting the machine.

On November 18, 2015, employer was having issues with its Western Union machine. A cashier called the corporate help desk for assistance. Later, claimant received a phone call from a person claiming to be with the corporate help desk to assist in resetting the machine. Claimant followed the instructions provided by the person on the telephone and as a result processed two Western Union transactions totaling approximately \$2,508.14. The next day, the Western Union fraud department contacted employer and informed it the transactions were fraudulent.

On November 24, 2015, employer terminated claimant's employment as a result of his actions on November 18.

Claimant had no previous warnings for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged 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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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 Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). 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).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy. The conduct for which claimant was discharged was merely an isolated incident of poor judgment for which he had never been previously warned. Claimant had previously reset the Western Union machine upon instruction from the corporate help desk. The corporate help desk had previously called claimant back with instructions to reset the machine. Although manager Holliday denies this could have occurred, no firsthand witness from the help desk testified during the hearing. Even the sign on the Western Union machine is not entirely clear. While it says Western Union will never call employer's store, it does not state that employer's corporate office will never call the store regarding the Western Union machine. Employer presented evidence of emails sent in April 2015 stating the owner or manager would never call the store regarding the Western Union machine. However, there is no evidence claimant reviewed the emails. While claimant may have used poor judgment in taking the call and following the instructions, there is no evidence indicating he took the call and followed the instructions with any malicious intent or disregard toward employer. Employer failed to establish claimant was terminated for job-related misconduct.

Because claimant is qualified to receive benefits, the issues regarding overpayment are moot and will not be discussed further.

DECISION:

The December 18, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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