

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JAMIE T SCOTT**  
Claimant

**APPEAL 16A-UI-10515-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EGS CUSTOMER CARE INC**  
Employer

**OC: 08/28/16  
Claimant: Respondent (1)**

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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 September 19, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 11, 2016. Claimant participated. Employer participated through human resources manager Sonia Johnson, operations manager Liz Paulsen, and team leader Holly DeMeyer. Andrew Glasscock and Cary Hullinger registered for the hearing on behalf of the employer, but did not attend the hearing. Claimant exhibit A was admitted into the record with no objection.

**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 customer service representative from August 25, 2014, and was separated from employment on September 1, 2016, when he was discharged.

The employer has a site practice that calls for automatic termination if an employee hangs up on a customer, including if it is a first offense. The site practice is discussed during training. Other employees have hung up on customers and they have been discharged.

On August 31, 2016, while claimant was working his scheduled shift, the employer discovered he had improperly released twenty phone calls with customers. The employer discovered this issue when the team lead discovered claimant had twenty very short calls. Claimant's phone

calls were recorded and for one of the phone calls the employer was able to review a video of his computer screen. On that phone call, the employer was able to observe claimant maneuver the mouse over the disconnect button and click disconnect. The disconnect button automaticity releases the caller from claimant to a survey. The employer reviewed all of the phone calls. The employer determined that the customers would be released prior to their issue being resolved; the customer would either be disconnect or transferred to a department they should not have been transferred to. During the calls, Ms. DeMeyer could hear there was confusion by claimant and the customer. The employer investigated and determined that there were no reported phone or system issues during this time period. Claimant did not report to the employer any phone or system issues during this time period. Claimant is required to report any issues with the phone or system.

After the employer reviewed the calls, it met with claimant about what was happening. Claimant stated he did not know why the phone calls would be disconnected. On September 1, 2016, the employer discharged claimant for hanging up on customers.

Although claimant had been working with the employer since 2014, on August 31, 2016 he was only in week five of his training on the new program. Claimant Exhibit A. Claimant testified he was struggling to use the new program. Claimant had to pass assessments in order to progress through the training. Claimant passed his assessments, but he had to take the assessments multiple times to achieve a satisfactory score. Claimant also asked multiple questions while he was answering customers' calls because he was unfamiliar with the program. Prior to meeting with the employer, claimant had requested to be transferred to a different product because of his struggles with the new program. Claimant had no prior disciplinary warnings for hanging up on customers or improperly transferring customers.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

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).

Iowa Admin. Code r. 871-24.32(5) provides:

Discharge for misconduct.

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

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 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." *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).

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. 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 impose discipline up to or including discharge for the incident under its policy.

The employer failed to establish that claimant's conduct on August 31, 2016 was committed with any "wrongful intent." Claimant credibly testified that although he was in week five of training, he was struggling to use the new program. Prior to meeting with the employer about the twenty phone calls, claimant had requested a transfer to a different product because of his struggles.

Furthermore, Ms. DeMeyer credibly testified that when she reviewed the phone calls, claimant sounded confused. It is also noted that claimant had no prior disciplinary warnings for hanging up or improperly transferring customers.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

The employer has not met its burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

As benefits are allowed, the issues of overpayment, repayment, and the chargeability of the employer's account are moot.

**DECISION:**

The September 19, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs