

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MILADA HALILOVIC
Claimant

APPEAL NO. 17A-UI-07611-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEDIACOM COMMUNICATIONS
Employer

**OC: 06/25/17
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Mediacom Communications (employer) appealed a representative's July 17, 2017, decision (reference 01) that concluded Milada Halilovic (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 14, 2017. The claimant participated personally. The employer participated by Louis Gentile, Group Vice President of Internal Audit; Pamela Wellman, Vice President of Human Resources; and Brian Ehrenhard, Director of Sales and Support. Exhibit D-1 was received into evidence.

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 October 11, 2011, as a part-time telemarketing representative. The claimant signed for receipt of the employer's handbook. The handbook indicates employees should not change identification numbers. The employer did not issue the claimant any performance warnings during her employment.

In 2015, the claimant started working on a new project. She does not remember receiving any training for the project. Shortly after the project began she noticed her co-workers were changing the e-commerce identification codes to their own codes. The claimant assumed she was supposed to do this when she made a sale. The company had full audits from 2015 to 2017 and nothing was said to the claimant about the codes.

In early June 2017, her supervisor asked her why she modified a code. The claimant explained the history and her reasoning. The supervisor told her not to do it anymore. The claimant did not and offered to correct previous changes. The supervisor told her it was not necessary. The employer investigated while the claimant continued to work through June 27, 2017. On June 28, 2017, the employer terminated the claimant for committing fraud.

The claimant filed for unemployment insurance benefits with an effective date of June 25, 2017. The employer participated personally at the fact finding interview on July 14, 2017, by Pamela Wellman.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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(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.

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). Misconduct connotes volition. A

failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. *Huntoon v. Iowa Department of Job Services*, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer has a right to expect employees to follow instructions in the performance of the job. Sometimes instructions are not clear because training is not given. One of the reasons the employer terminated the claimant was for poor performance in following the rules. The employer has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of her lack of training in how to record the data. For two years the employer was performing audits, gathering information, and not giving the claimant feedback. The employer should have known the claimant was making a mistake in her data entry.

The employer must also show a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on or about June 1, 2017. The claimant was not discharged until June 28, 2017. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's July 17, 2017, decision (reference 01) is affirmed. 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