

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JACOB M GERTH**  
Claimant

**APPEAL NO. 18A-UI-10444-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEDGWICK CLAIMS MANAGEMENT  
SERVICES**  
Employer

**OC: 09/23/18**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Sedgwick Claims Management Services (employer) appealed a representative's October 8, 2018, decision (reference 01) that concluded Jacob Gerth (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 November 2, 2018. The claimant participated personally and through former co-worker, Casey Edinger. The employer was represented by Jackie Boudreaux, Hearings Representative, and participated by Brienne Wilson, Senior Business Partner. Exhibit D-1 was received into evidence. The employer offered and Exhibit 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 March 5, 2018, as a full-time leave of absence coordinator. The claimant signed for receipt of the employer's digital handbook when he was hired. The employer issued the claimant a written warning for performance and attendance issues. The claimant had a quality score that was below the employer's expectations and the claimant had been absent four days in six months. The employer notified the claimant that further infractions could result in termination from employment.

The employer used Avaya software in its call center. The employer sometimes sent employees emails when the system was down. Sometimes employees knew it was down because calls had to be placed manually. Other times when the system was down, the employer did not notify employees and the employees were unaware of the issue. The employer was unsure whether the software tracked calls when the Avaya software was down.

On September 24, 2018, the employer called the claimant in for a meeting and asked him to explain why he documented that he made calls but the software system did not have a record that calls were made on September 14 and 17, 2018. The claimant told the employer he was in a hurry. On September 24, 2018, the employer terminated the claimant. He testified that he always made his calls and documented the way he was trained. The claimant made all documented calls.

The claimant filed for unemployment insurance benefits with an effective date of September 23, 2018. The employer provided the name and number of Brienne Wilson as the person who would participate in the fact-finding interview on October 5, 2018. The fact finder called Ms. Wilson but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. Ms. Wilson knew she had an interview scheduled but then forgot. Her supervisor told her to travel to an office in another town. She did not receive the message from the fact finder until October 8, 2018.

### **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(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer's lack of evidence of calls on September 14 and 17, 2018, could be related to problems with the employer's Avaya system. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's October 8, 2018, 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