

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAYLIE M REED

Claimant

SAFELITE SOLUTIONS LLC

Employer

APPEAL 22A-UI-01274-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/24/21

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

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 3, 2021, (reference 01) unemployment insurance decision that allowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on March 8, 2022. The claimant, Kaylie Reed, participated personally. The employer, Safelite Solutions LLC, participated through hearing representative Blair Lampel and witness Annette Cole. No exhibits were offered or admitted.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any 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 part time as a customer service representative. Claimant was employed from October 14, 2019 until October 26, 2021 when she was discharged from employment. Claimant's job duties involved handling customer service issues over the telephone. Claimant's immediate supervisor was Hayden Best.

On October 16, October 15, October 13, October 12, October 11, October 9, October 8, October 6, October 4 and October 2, 2021 the claimant was found to have avoided telephone calls by staying silent until the caller disconnected instead of talking to the caller. The employer has a work from home management team that monitors the calls and found the claimant did not speak to the caller on the dates identified. The employer testified that the employer spoke with the claimant about these issues and the claimant explained that she was having phone issues.

The employer testified that there was no record of claimant calling IT. The claimant testified that she contacted IT multiple times about the phone issues that she was having. Claimant noticed that she didn't receive any indication of when she had a call. Claimant said that she spoke with IT representatives who did not provide her with a ticket number but who told her there was a widespread issue affecting people working from home. Claimant did not have a log of her calls to IT as it was within her system with the employer and she no longer had access.

REASONING AND CONCLUSIONS OF LAW:

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

As a preliminary matter, the administrative law judge finds that the Claimant did not quit. Claimant was discharged from employment.

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(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 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).

In this case, the employer stated when claimant was confronted with not handling the phone calls on the dates identified, claimant's explanation was that she was having phone issues. The claimant testified that she contacted IT several times about the phone issues. The employer said there was no record of claimant contacting IT, however, the claimant did provide this explanation to the employer when she was asked about the issue. The employer did not investigate whether the claimant was actually experiencing phone issues as she said. The claimant was told by IT that at the time there was a widespread phone issue with individuals working from home. Claimant had an explanation for why her calls weren't handled on the dates in question that was not looked into.

Further, the last date of the occurrence happened October 16, 2021. Claimant was not discharged until October 26, 2021, nearly 10 days later. A claimant cannot be discharged for a past act of misconduct.

Iowa Admin. Code r. 871-24.32(8) provides:

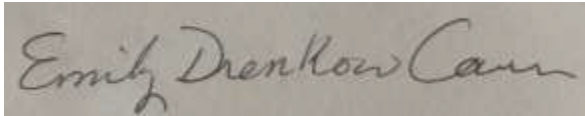
(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The purpose of this rule is to assure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises. For example, an employer may not convert a lay off into a termination for misconduct by relying on past acts. *Milligan v. EAB*, 802 N.W.2d 238 (Table)(Iowa App. June 15, 2011).

The employer has failed to meet its burden of proof in establishing a current act of disqualifying job-related misconduct. As such, benefits are allowed. Because benefits are allowed, the issues of overpayment and chargeability are moot.

DECISION:

The December 3, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

A rectangular box containing a handwritten signature in dark ink. The signature is cursive and reads "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

March 23, 2022

Decision Dated and Mailed

ed/abd