

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA M KENYON
Claimant

APPEAL NO. 07A-UI-10530-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INNOVATIVE INJECTION
Employer

**OC: 10/14/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 6, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 30, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Lisa Buzzard participated in the hearing on behalf of the employer with a witness, Morgan Endecott. Exhibits One through Nine were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as an accounting clerk from July 7, 1981, to October 17, 2007. The claimant was informed and understood that under the employer's work rules, unsatisfactory work, repeated negligence, and inattention to details, were grounds for disciplinary action.

On July 9, 2007, the claimant was responsible for entering and transmitting the hourly employees' payroll after it had been processed by Stephanie Mathias. Mathias took longer than usual to process the payroll and the claimant was not able to complete her work on the payroll until the end of the workday. In addition, the claimant was working on billing. Normally, when payroll is submitted to the data processing company, the claimant received an email back stating that it was available to be previewed. On this day, the claimant did not receive the email back by the time she was scheduled to leave for the day. She was unsure what the problem was; but since no one else was in the office at that time, she decided to leave and handle the matter the next morning. On July 10, 2007, the claimant received a written warning and was relieved of her payroll duties for making an error in the payroll submission that caused it to be rejected and for failing to resubmit the payroll in a timely manner.

On July 13, 2007, the claimant received a second written warning for a quality discrepancy. On July 2, the claimant was responsible entering information into the payroll system for a new

employee. The claimant failed to enter an hourly amount for an employee. The employee, therefore, received a paycheck for zero dollars on July 13. There were other individuals who would have reviewed the payroll data before the checks were cut who did not catch the claimant's error.

On July 16, 2007, the claimant received her yearly review, which emphasized that the quality of the claimant's work had deteriorated over the course of the year and identify the payroll errors she had made and frequent billing errors. She was placed on probation for 60 days and given a goal to meet of having no more than two billing errors per month.

On August 8, 2007, the claimant received a final written warning for exceeding the billing error goal for having four billing errors since the yearly review. The first two occurred on July 16. The claimant neglected to bill out two line items on a large parts order. She caught the errors herself the next morning and immediately billed the customer. On July 19, the claimant made a mistake in entering a part quantity but again found and corrected the error. On that same day, the claimant sent a billing to the wrong customer. On September 27, 2007, at the end of the 60-day probation, the claimant received another review that showed some improvement in the quality of her work but noted that it still did not meet expected standards. She continued to have a goal of less than two billing errors per month and to improve her Excel skills. She was informed that she could be discharged if she failed to meet expectations.

On September 25, 2007, the claimant entered information into payment system to issue a payment on a credit card account to Wells Fargo Remittance Center. She mistakenly selected the account for another Wells Fargo vendor, "Wells Fargo Equipment Finance," which caused the check to be sent to the wrong vendor.

Shortly before October 17, 2007, the employer's chief financial officer, Morgan Endecott, found out that the claimant had issued and sent the check to the wrong Wells Fargo vendor, which resulted in a late charge and additional finance charge to the employer. Endecott discharged the claimant for negligence in her job performance.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Code section 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.

871 IAC 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.

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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

No willful misconduct has been proven in this case. The question is whether the claimant's negligence equals willful misconduct in culpability. Whether considered alone or in conjunction with the conduct that the claimant had previously been warned about, conduct equally willful wrongdoing has not been proven. Such conduct would need to amount to a reckless disregard of the employer's interests that I cannot find in this case. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

DECISION:

The unemployment insurance decision dated November 6, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw