

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

Holly S. DeBartolo
Claimant

APPEAL 20A-UI-04593-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

Aramark Facility Services, LLC
Employer

OC: 04/12/20
Claimant: Appellant (2)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Code section 96.5(2)a – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(1)a – Discharge for Misconduct
Federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act), PL 116-136, section 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

Holly S. DeBartolo filed an appeal from the ffdte (reference 0ref#) unemployment insurance decision finding her ineligible for unemployment insurance benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 15, 2020. DeBartolo participated personally. Aramark Facility Services, LLC (Aramark) participated through Jennifer Groenwald.

The evidentiary record consists of:

- 1) Claimant's Exhibit A;
- 2) Employer's Exhibit 1; and
- 3) Hearing testimony by DeBartolo, Luke Shogren, and Kelly Leonard.

ISSUE:

Did Aramark discharge DeBartolo for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Aramark hired DeBartolo on May 30, 2012. She was a food service director for Aramark. DeBartolo was a full-time employee. She reported directly to Luke Shogren, the general manager.

UnityPoint contracts with Aramark for food and nutrition services. Aramark provides these services at Iowa Methodist, Iowa Lutheran, and Methodist West hospitals. DeBartolo oversaw these services at Iowa Lutheran.

Under the arrangement, Aramark must follow some UnityPoint policies. At issue here are the policies and procedures governing cashiers and solicitation at UnityPoint facilities.

According to the standards, "Cashiers are responsible for their banks and funds from the time they receive them until the time they turn them in at the end of the day." UnityPoint requires cashiers to keep cash register drawers closed after each transaction until the next transaction takes place. UnityPoint also instructs cashiers:

At the end of your shift, in the cash office and in the presence of your supervisor, count and verify the "Cash Turned In." Complete the right half of the Cash Slip form and sign to verify all information is accurate. The supervisor will then verify the cash and sign the form in your presence. Cashiers will be held responsible for the starting change bank and money from all transactions completed by them during their shift.

No personal money is permitted on a cash-handler's person when operating a cash-receiving position.

UnityPoint also has reduced the responsibilities of managers and supervisors to writing. They include periodic, unannounced audits of cash registers. Further, (sic)

A manager or supervisor will, along with each cashier at the end of their shift, count down the money tray and enter the dollars by denomination (i.e., \$200 in \$20's, \$110 in 10's) on the Cashier Return Card. The manager will sum and verify the amount.

UnityPoint has rules regarding solicitation. Employees are prohibited from selling things during working times. However, UnityPoint expressly authorizes employees selling things during non-working times such as during lunch, other breaks, and before or after shifts. UnityPoint forbids solicitation at all times in patient care areas, when solicitation would disrupt the delivery of healthcare services, and when the person being solicited is a co-worker on the clock.

DeBartolo knew of these policies. She provided training to staff on cash-handling policies. Aramark conducts random financial audits to check performance. Aramark conducted one of DeBartolo's team and gave her a to-do checklist. But there is no indication the audit resulted in Aramark disciplining DeBartolo or informing her that she might be disciplined or discharged in the future if staff under her supervision failed to comply with any policies or procedures.

In the early days of the COVID-19 outbreak in Iowa, personal protective equipment (PPE) was in short supply. This included masks that would help mitigate the spread of the virus. UnityPoint had rules in place regarding PPE to preserve it for use in the direct care of patients. UnityPoint did not require universal mask-wearing until May 6, 2020.

As the manager, DeBartolo had multiple employees under her in the chain of command. But she did not directly supervise all of them. Supervisors who reported to DeBartolo did. This included employees of UnityPoint.

A UnityPoint employee in DeBartolo's chain of command and supervised by another UnityPoint employee began selling homemade masks to staff. The worker's wife made them. The worker sold them. DeBartolo bought one.

The worker worked as a cashier. He began selling the masks while on the clock at his cash register. Further, he used the cash drawer to store his earnings and to make change for sales of the masks. This commingled his personal money from the sales with what was in the cash drawer for sales. DeBartolo did not know the worker was engaging in these activities.

On April 9, 2020, no manager or supervisor verified the amount of money in this workers' drawer. After receiving a complaint, Shogren investigated on April 10, 2020. He found the cashier's drawer from the day before was short by twenty dollars.

DeBartolo thought the worker selling the masks was just trying to help people get masks to help mitigate the spread of COVID-19. Aramark had never disciplined DeBartolo before. Nonetheless, Aramark decided to discharge DeBartolo because of the cash-handling violation.

Aramark articulated its rationale for discharging DeBartolo on April 13, 2020, as follows:

On multiple occasions, Holly has allowed an cashier to sell his own product at the register. Holly even purchased an item from this cashier, rather than putting a stop to this activity. Most recently, following repeated cash variances with cash over and short, it was learned that the employee was using his assigned cash register drawer to make change for the purchases of his own product. Not only is the "selling of person product" a conflict of interest violation, but the allowance of the employee to use an issued cash drawer to make change is a violation of the Cash Handling Policy.

As an employee of Aramark, Holly has an obligation to put Aramark's business imperatives first, and ensure that her representation of Aramark serves the organization's best interests. Holly did not inquire with the client OR her Supervisor to ask whether this activity is acceptable.

Action to be Taken:

Holly's actions, and her allowance and enablement of the employee's actions, does (1) not represent Aramark's best interests and (2) places the organization at risk, due to the policy violations. Holly's employment with Aramark is terminated, effective immediately.

There is no evidence in the record regarding any conflict of interest policy Aramark may have had in place. At hearing, Shogren testified that violating the business conduct policy is serious, but the violation of the cash-handling policy is what it a terminable offense. Thus, Aramark discharged DeBartolo for allowing a subordinate worker to sell home-made masks during the COVID-19 outbreak and keep personal funds in a cash drawer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a)

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 Administrative Code rule 24.32(1)a states:

"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 Iowa Supreme Court has held this definition accurately reflects the intent of the legislature in enacting the Iowa Employment Security Law. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979). Misconduct must be "substantial" to make a claimant ineligible for benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

The employer has the burden to prove misconduct that makes a claimant ineligible to get unemployment benefits. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In unemployment appeals, the question is not whether the employer made the right decision when it discharged the claimant in separating claimant. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The question is whether the claimant is entitled to unemployment insurance benefits under the law. *Id.*

In Iowa, an employer may discharge an employee for any number of reasons or no reason at all, so long as the discharge is not unlawful. But the question in an unemployment appeal is not whether the employer's decision to discharge an employee is allowed under the law. The question is whether the reason for the discharge was misconduct that disqualifies the employee from receiving benefits.

A determination of 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.

These events in question took place in a hospital. DeBartolo believed in good faith that allowing the worker to sell home-made face masks was helpful because it allowed more people to have them. And the more people who had them, the greater the effect of mitigating potential spread of the pandemic among staff. While it would have been best if she had asked her supervisor or the client if allowing the worker to sell the masks was okay, she was acting in the interest of the

health of her staff and visitors to the hospital. This act does not rise to the level of disqualifying misconduct under Iowa law.

The other reason Aramark discharged DeBartolo was the fact the worker used his cash drawer to hold his money from sales. This is a plain violation of UnityPoint policy and clearly problematic. But it is not DeBartolo's violation, even if he was in her chain of command. There is no indication DeBartolo knew this was going on and condoned it. It is Aramark's right to hold DeBartolo accountable for the actions of her subordinate employees, but under these circumstances, the subordinate employee using his cash drawer for personal funds does not constitute disqualifying misconduct by DeBartolo.

Aramark has failed to produce sufficient evidence from which to conclude it discharged DeBartolo for misconduct under Iowa law.

DECISION:

The May 15, 2020 (reference 01), unemployment insurance decision is reversed. Aramark did not discharge DeBartolo for misconduct under the law. DeBartolo is entitled to unemployment insurance benefits, provided she is otherwise eligible under the law.

A handwritten signature in black ink, appearing to read "Ben Humphrey", with a large, stylized flourish extending from the end of the signature.

Ben Humphrey
Administrative Law Judge

June 30, 2020
Decision Dated and Mailed

bh/mh