

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ILA J ZANATTA
Claimant

DOLGENCORP LLC
Employer

APPEAL 16A-UI-11976-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/09/16
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
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 October 28, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 22, 2016. Claimant participated. Employer participated through employee relations manager Sarah Price. Employer's Exhibit 1 was received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can 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 began working for employer on October 19, 2013. Claimant last worked as a store manager. Claimant was separated from employment on October 11, 2016, when she was terminated.

Employer has a policy requiring employees to be paid for all hours worked. The policy further states that managers should never enter modifications to an employee's clock in/out times that do not reflect an employee's actual hours worked. Employees are required to clock in when they start work, clock out and in before and after any break of 30 or more minutes, and clock out at the end of their work day. Claimant was aware of the policy.

When claimant was trained, she was told that if an employee misstated their time worked in the time clock system, claimant should adjust the time records. Claimant had several employees who clocked in early, clocked out late, and did not clock out at all throughout claimant's employment. Claimant discussed these issues with the various district managers who oversaw her. Staffing is a chronic problem for employer. The district managers warned claimant that

she should not “rock the boat” by disciplining or terminating employees when she did not have a sufficient amount of employees to fill the hours at the store. So instead of disciplining or terminating the employees for their time clock issues, claimant verbally warned the employees and manually adjusted their time records.

On October 6, 2016, assistant manager Jennifer Chiode told temporary district manager, Jared, she was working more hours than she was being paid for. Jared looked into the situation and found claimant had adjusted employees’ time records for a total of over 400 hours during the past two years. When questioned, claimant explained why she had been doing this. Employer’s video surveillance is only saved for a very limited amount of time. Jared viewed the footage for a few days and determined claimant was not credible.

Employer terminated claimant’s employment on October 11, 2016.

Claimant had never been previously warned regarding similar conduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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).

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 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *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). 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).

In this case, claimant manually adjusted her employees' time records to accurately reflect the time they were working. Although employer contends the few days of video surveillance it reviewed do not corroborate claimant's story, it did not present the video footage, any witness who viewed the video footage, or any witness who could directly contradict claimant's testimony. Therefore, I find claimant more credible. Ideally, claimant would have disciplined and/or terminated the employees for the time clock issues. However, claimant did not have sufficient staffing levels to do so and followed the advice of her district managers and refrained from "rocking the boat." Furthermore, no evidence of "wrongful intent" exists as claimant made no attempt to hide her conduct. She had been manually changing the time records for a period of two years for a total of over 400 hours. If frequent changes to the time records by managers are something that is frowned upon by employer, surely it is something it could have discovered in an audit of the time records long ago.

Employer failed to establish claimant fraudulently altered the time clock records or was otherwise terminated for job-related misconduct. Therefore, any issues regarding overpayment are moot and will not be discussed further in this decision.

DECISION:

The October 28, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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