IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

THERESA J GOLDIZEN Claimant **CIT CHARTERS INC** Employer	**APPEAL 17A-UI-08428-DL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/30/17** **Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the August 14, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on September 28, 2017. Claimant participated with her boyfriend Randy Briney and was represented by Harley Erbe, Attorney at Law. Employer participated through company president John Grzywacz. The administrative law judge took official notice of the administrative record, including fact-finding documents. Employer's Exhibits 1 and 2 were received. The administrative law judge took official notice of the administrative record, including fact-finding documents. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time customer care coordinator/sales person through July 27, 2017. Grzywacz fired her for three reasons. (Employer's Exhibit 2) On July 23 Grzywacz believed claimant had used the only office work computer on July 19 to search for a job with a competitor during work hours. She had not and did not knowingly grant anyone access to do so. The computer is password protected, but the simple password was well-known to others besides claimant who have keys to the office and access to the computer. When claimant denied the act, Grzywacz did not ask her if she knew who did use the computer but assumed it was Briney. Briney voluntarily left his employment within a day of claimant.

On July 19, claimant notified customer care coordinators Joan Dodd and Drew B. of the need to take July 20 off from work for a last-minute dental matter regarding her grandson. Dodd agreed she should be off work. (Claimant's Exhibit A) On July 19 John and Kim Grzywacz[1] were traveling. Kim was claimant's supervisor. Kim had previously told employees that if she was

[1] Kim Grzywacz did not participate in the hearing.

traveling and an employee needed time off they should notify a member of the sales team. She had requested July 21 off in advance, which was granted.

On July 21 Grzywacz became aware of a text message claimant sent to client Pioneer on July 20, regarding a concern it had. Claimant pointed to a failure of dispatch to follow her communication but she accepted responsibility. (Employer's Exhibit 1) Grzywacz described his concern as a failure to enter her communication correctly into the computer. Pioneer contact Karen later told claimant she appreciated her assistance and resolution of the matter. Claimant handled this work matter for the employer while off work for her grandson's dental appointment.

The employer does not have a written policy regarding computer use or urgent requests for time off work. The employer had not previously warned claimant her job was in jeopardy for any similar reasons.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

> **Causes for disqualification.**
>
> 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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). …the definition of misconduct requires more than a "disregard" it requires a "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." Iowa Admin. Code r. 871–24.32(1)(a) (emphasis added).

Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. *See Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

The employer has failed to establish that claimant was discharged as a result of any deliberate conduct, omission or negligence in breach of the employer's interests. At most, the conduct for which claimant was discharged was a series of three isolated incidents of simple misunderstanding of employer's expectations. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

DECISION:

The August 14, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs