

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-08865-LT
OC: 07-25-04 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the August 12, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 10, 2004. Claimant did participate and was represented by Nathan Moonen, Attorney at Law. Employer did participate through Sue Lester and Jeff Squires.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time center business manager through July 26, 2004 when he was discharged. An anonymous letter sent in late June 2003 alleged claimant was stealing from the company and had been for some time. Employer used an outside consulting security firm to conduct the investigation. John Feldman and Jeff Squires began the investigation on July 20

and interviewed Cory Nemmers and Bill Pitzer, among others. Nemmers and Pitzer supposedly gave examples of management decisions to obtain employee signatures for gift card incentives that were not distributed to employees who signed for them.

Employer suspended claimant for five days prior to the discharge pending an investigation. Feldman told claimant he was being investigated for fraud or forgery and threatened legal prosecution. Employer did not directly confront claimant about Nemmers' and Pitzer's allegation. Sue Lester and Jeff Squires called and told claimant he was fired but gave no reasons.

Claimant did direct his subordinate supervisors to go to the named employees to obtain their signatures for gift card incentives but never directed them to forge names. Dan Schuster, recruiter, then took them and claimant's assigned purchasing (credit) card to buy the gift card incentives. It was common practice to allow others to use the purchasing card in their name for center purchases. Employees had not received the gift cards for which they had purportedly signed. There is no evidence of claimant's signatures on any cards. Schuster phoned in his resignation while on vacation during the course of the investigation. Claimant had asked his superiors repeatedly for assistance with his duties after the Dubuque call center was increased from 80 to 187 employees and no other floor management was added. Because of the added duties supervising an additional 100 employees, claimant did not always have time to audit the credit card purchases. No prior warnings were issued about any subject.

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:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 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. IDJS, 364 N.W.2d 262 (Iowa 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. IDJS, 425 N.W.2d 679 (Iowa 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written) and reasonable notice should be given. Finally, employer did not meet its burden of proof to establish job misconduct. If an employer expects a supervisory employee to maintain their standards and procedures, they must reasonably provide additional support proportionate to the increased duties. There is no evidence claimant intentionally failed to follow procedures or was aware of or involved in the purchasing card problems. Benefits are allowed.

DECISION:

The August 12, 2004, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

dml/tjc