

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDY L DODDS
Claimant

THEISENS INC
Employer

APPEAL 18A-UI-08995-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/29/18
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 August 20, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 25, 2018. Claimant participated and testified. Employer participated through Risk Management/Loss Prevention Manager Dan Connolly. Laurie Fedje was also present on behalf of the employer, but did not testify.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any 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 September 22, 2016. Claimant last worked as a full-time sales associate. Claimant was separated from employment on June 28, 2018, when he was discharged.

On June 21, 2018, claimant asked someone in the employer's shop if they would have time to do some work on his truck that day. The employee told claimant they did not have any appointments until 9:30 a.m. and to pull his truck into Bay 3. Claimant did this and then continued on with his work. The employer testified customers are generally required to leave their keys until payment for work is made. Claimant did not work in the service area and was not aware of this policy. Claimant was never asked for his keys or instructed to leave his keys with anyone. A short while later claimant was informed the work was done and was asked to

move his truck to free up the stall, which he did. On his way back to his department claimant stopped at the auto counter to see if his invoice was ready. No one was there, but claimant saw several invoices. He looked them over, but none of the invoices were his. Claimant returned to work with the intention of stopping by the counter again later.

Later in the day, claimant stopped by the counter again on his way to lunch. Again, there was no one at the counter and claimant could not find his invoice. Claimant returned to his work. Claimant testified he had been working very hard that day, as he was getting ready to begin a week-long vacation the next day. A few hours after he returned from lunch, claimant's manager approached him and asked if he would like to start his vacation a little early by leaving for the day. Claimant happily agreed and left work, forgetting to check back with the auto counter about his invoice.

A few hours later claimant received a call at home from a coworker. The coworker explained claimant had not paid his service bill before leaving and asked him to come in and pay it. Claimant told his coworker he had been drinking since arriving home for the day and did not believe he should be driving. Claimant assured the employee he would be in to pay the bill first thing in the morning, even though it was a scheduled vacation day.

Following this conversation one of claimant's supervisors attempted to call him about the unpaid invoice, but claimant did not have his phone on him and missed the call. Claimant was waiting at the employer to pay his invoice when the store opened the next morning. When claimant went to the counter, his invoice still could not be found, so the employee working printed a new one. Claimant and the employee were both unaware that the manager had taken the invoice up to the office because she wanted to speak with claimant. Claimant paid his bill and continued on his vacation. Claimant was discharged for theft of company property upon his return from vacation.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 29, 2018. The claimant filed for and received a total of \$546.00 in unemployment insurance benefits for the weeks between July 29 and August 11, 2018. Both the employer and the claimant participated in a fact-finding interview regarding the separation on August 17, 2018. The fact finder determined claimant qualified for benefits.

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 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). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to 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.

Here, claimant attempted multiple times to pay for services provided to him by the employer, but no one was available to give him his invoice or collect his employment. Later in the day, in his haste and excitement to begin his vacation, claimant forgot about checking again on the invoice. After being notified of his mistake, claimant returned to the store as soon as practically possible and made his payment. There is no indication that claimant ever intended not to pay or that he was deliberately trying to avoid having to pay the employer for its services. The employer 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. As such, benefits are allowed. As benefits are allowed, the issues of overpayment and participation are moot.

DECISION:

The August 20, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs