

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TALONDA T KING
Claimant

PILOT TRAVEL CENTERS LLC
Employer

APPEAL 20A-UI-00093-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/24/19
Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

Pilot Travel Centers (employer) appealed a representative's December 30, 2019, decision (reference 04) that concluded Talonda King (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 24, 2020. The claimant participated personally. The employer participated by William Hook, General Manager, and Jeffrey Haney, Assistant Manager.

The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 25, 2019, as a full-time lead cashier working the overnight shift. The employer had a handbook but the claimant did not receive it.

On November 21, 2019, the day crew heard that the GM was going to fire the entire night shift crew. The claimant and the night crew heard the information. The claimant called the employer's complaint line on November 21, 2019, and discussed the GM's intentions. She said she thought her job was in jeopardy. The GM met with the claimant and night shift crew the night of November 21, 2019, and assured them that he had not made that statement.

During the claimant's overnight shift on November 21 and 22, 2019, there were problems with the gas pumps. Customers were calling in on the store's telephone line telling the claimant of the issues. She was calling out on her cellphone to obtain service to fix the pumps.

While she was working on November 22, 2019, the claimant purchased a KitKat Bar. It was on sale for \$.99 but rang up for \$1.49. The bar crumbled. The claimant wrapped the receipt around the bar and left it on the counter in an effort to have the item traded for another undamaged bar.

On the morning of November 22, 2019, the GM met with the claimant. He was angry and lunged at the claimant. She thought the GM was going to hit her. She left, went home and called the employer's complaint line on November 22, 2019. The claimant complained about the GM's behavior and said she was in fear for her job. That same day, the general manager prepared an Employee Progressive Discipline Form for "changing her schedule on her own without approval by the Manager". The general manager did not discuss the warning with the claimant or give a copy to the claimant. The general manager had an employee at Arby's sign for receipt of the reprimand.

On November 26, 2019, the GM told the claimant that a customer complained about her. The customer said the claimant was on her cellphone and she had poor customer service. The GM said the customer was in the store for three hours on November 21, 2019, and saw the claimant eat a candy bar that she did not pay for. The GM had watched a video and did not see the claimant pay for the candy bar. The GM terminated the claimant for theft and poor performance. The claimant again called the employer's complaint line regarding the GM.

The claimant filed for unemployment insurance benefits with an effective date of November 24, 2019. The employer provided the name and number of Jordan Wolfe as the person who would participate in the fact-finding interview on December 18, 2019. The fact finder called Jordan Wolfe but the person was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not submit the specific rule or policy that the claimant violated which caused the separation or any proof of wrong doing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct.

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 in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. If the employer has a policy regarding retention of receipts or consumption of products, they did not provide that policy to the claimant during her employment. The employer did not issue the claimant any previous warnings regarding this issue. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible. The GM's actions against the claimant appear to have escalated once the claimant lodged complaints against the GM.

DECISION:

The representative's December 30, 2019, decision (reference 04) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn