

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CODY C LENHART
Claimant

AT&T MOBILITY SERVICES LLC
Employer

APPEAL 17A-UI-03923-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/12/17
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:

AT&T Mobility Services, LLC (employer) filed an appeal from the March 29, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Cody C. Lenhart (claimant) did not engage in willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on May 15, 2017. The claimant participated personally. Vice President of CWA Doug Graham participated on the claimant's behalf. The employer participated through Retail Store Manager Holly Kalinowski and was represented by Tanis Burrell from Equifax. Employer's Exhibit 1 was received. Official Notice is taken of the administrative record, including the fact-finding documents.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits?
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: The claimant was employed full-time as a Retail Sales Consultant beginning on July 1, 2011, and was separated from employment on March 15, 2017, when he was discharged. The employer has a Code of Business Conduct for which the employees receive annual training. One of the policies addresses unacceptable payment methods which includes the agent using his or her own personal credit card to pay for a customer's service.

On February 14, 2017, the claimant was assisting a customer who acquired a pre-paid credit card for the purpose of purchasing Direct TV and paying for his installation. When the claimant ran the pre-paid credit card, the system would not permit that type of payment for installation services in the amount of \$21.34. The claimant's supervisor, Retail Store Manager Holly Kalinowski, was present and assisted during this exchange. The claimant then ran the pre-paid

credit card again and this time the payment was declined for insufficient funds. This happened multiple times. The claimant contacted the card issuer for the customer and learned that the employer would keep a hold on the customer's funds for eight days. The claimant, in an attempt to help a customer who had neither his money nor the service he was trying to obtain, went to his car and retrieved his personal debit card. He ran his debit card for the customer's installation and the customer gave him the pre-paid card. Kalinowski learned about the event the same day and reported it to Loss Prevention.

On February 24, 2017, Loss Prevention conducted an investigation. The claimant reported the events that occurred on February 14. The claimant had previously received a warning for creating a hostile work environment. He had not had any warnings for anything similar to the incident that occurred on February 14.

On March 15, 2017, the employer made the decision to end the claimant's employment after the investigator's conclusions could be reviewed by other departments. The claimant had been allowed to continue working for the month before his discharge. According to the employer's witness, if the claimant had not had the previous warning, the incident on February 14 would not have led to his discharge.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$3,539.00, since filing a claim with an effective date of March 12, 2017, for the eight weeks ending May 6, 2017. The administrative record also establishes that the employer provided contact information for Kalinowski. The fact-finder attempted to contact her but was told she no longer worked at that store. The phone number provided for the fact-finding was the phone number for a store at which she worked four years prior. The employer did not submit any documents for the fact-finding.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa regulations define misconduct:

“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.

Iowa Admin. Code r. 871-24.32(1)a. 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).

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. 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). 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).

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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.

In this case, the claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). The claimant was discharged for an isolated incident of poor judgment and, as the employer had not previously warned him about the issue leading to the separation, it has not met the burden of proof to establish that the 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. Training or general notice to staff about a policy is not considered a disciplinary warning. A warning for creating a hostile work environment is not similar to using an unacceptable form of payment and the employer's simple accrual of a certain number of warnings counting towards discharge does not establish repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits. Additionally, it cannot be concluded that that the claimant's conduct was a wanton disregard of the employer's interest warranting a denial of unemployment insurance benefits when the employer allowed him to continue working for the month before discharging him. Accordingly, benefits are allowed.

As benefits are allowed, the issues of overpayment and repayment are moot and charges to the employer's account cannot be waived.

DECISION:

The March 29, 2017, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment and repayment are moot and charges to the employer's account cannot be waived.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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