

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MONIQUE L MCCAULEY**  
Claimant

**APPEAL 18A-UI-04806-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROGRESSIVE PROCESSING LLC**  
Employer

**OC: 03/25/18  
Claimant: Respondent (1)**

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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 April 13, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 14, 2018. The claimant did not participate. The employer participated through Hearing Representative Beverly Maez and Human Resource Manager Michael Betz. Employer's Exhibits 1 through 9 were received into evidence.

**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 was employed full time as a spam pack service associate from May 15, 2014, until this employment ended on March 6, 2018, when she was discharged.

On February 8, 2018, claimant was operating a fork lift, scanning and moving pallets. The employer's policies and procedures require pallet tags to be scanned at each step of the process so they are able to track where product is at any given time. The policy requires all scanning be done in real time. The employer explained this is important because the product they deal with is food product and they need to be able to locate it quickly in case of a potential contamination or recall. The employer further explained, this system allows its sales people to know how much product is in inventory to sell at any given time. Claimant had been trained on the employer's scanning procedures. (Exhibit 2).

On the date in question claimant accidentally entered a computer screen that was requiring her to scan a pallet tag in order to get out of the screen. Claimant grabbed a blank pallet tag and scanned it to get out of the screen. (Exhibit 3). The result of claimant's action was that the employer's computer system then believed there was a pallet of goods that did not actually exist. Claimant's actions were discovered on February 19, 2018 by quality assurance personnel. Claimant was on vacation at the time of the discovery, but the employer spoke to her about it upon her return. Claimant explained that she was in a hurry to move to her next task and no supervisors were around to immediately assist her, so she grabbed a blank pallet tag and scanned in. During the conversation claimant acknowledged that she probably should have waited for a supervisor to come assist her.

Prior to this incident, claimant had three other write-ups within the rolling 12-month period – one for pushing trollies with her forklift, another for entering the production facility in her street clothes, and a third for an improper call in. (Exhibits 4 through 6). The employer has a policy in place which provides for termination after four write-ups in a rolling year. (Exhibit 9). The employer concluded claimant's actions on February 8, 2018 violated both is scanning procedures and policies regarding falsification of records. The decision was then made to separate her from employment under the four strikes policy. (Exhibit 7).

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 25, 2018. The claimant filed for and received a total of \$2,730.00 in unemployment insurance benefits for the weeks between March 25 and May 5, 2018. Both the employer and the claimant participated in a fact finding interview regarding the separation on April 12, 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.

Claimant was discharged after she scanned in a tag for a pallet that did not exist in order to be able to exit a computer screen. The conduct for which claimant was discharged was merely an isolated incident of poor judgment. While claimant had been written up before, those incidents were not similar enough to establish a pattern of misbehavior. As such, the employer has only shown that claimant was negligent. "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability.

Claimant did not think about the consequences for doing something as simple as scanning in a blank pallet tag for product that did not exist. Her conduct 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). Ordinary negligence is all that is proven here. Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided claimant is otherwise eligible. As benefits are allowed, the issues of overpayment and participation are moot.

**DECISION:**

The April 13, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment and participation are moot.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs