

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RRICHA C SPEIGHTS
Claimant

AT&T MOBILITY SERVICES LLC
Employer

APPEAL 21A-UI-04751-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/08/20
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the January 25, 2021 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon her separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on April 13, 2021. The claimant participated personally. The employer was represented by hearing representative Alyce Smolsky and participated through witnesses Matt Hultgren and China Kellam. Employer's Exhibits 1 through 8 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Is the claimant overpaid benefits?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a customer service representative. She began her employment on August 12, 2019 and her employment ended on November 12, 2020.

On June 28, 2020, a memorial service was held for Andra "Ricky" Kelly. See Exhibit 3. Mr. Kelly was the man who raised the claimant's father and whom claimant had known as her grandfather. It was never confirmed whether Mr. Kelly was the biological father of claimant's father.

Claimant notified Ms. Kellam that her grandfather passed away. See Exhibit 2. She stated that it was her dad's biological dad. See Exhibit 2. Ms. Kellam responded by text message with excerpts from the employer's three days of bereavement leave policy. See Exhibit 2. Claimant

used the bereavement leave to attend Mr. Kelly's memorial service in Missouri. Mr. Kelly's burial was in Illinois.

The employer interviewed the claimant regarding the legal relationship between her and Mr. Kelly on October 21, 2020. Claimant stated that Mr. Kelly was a grandfather to the claimant because he had raised her father. See Exhibit 4. Claimant further stated that her father never confirmed whether Mr. Kelly was his biological father.

The employer's policy provides that an employee shall be paid up to three days at his/her basic wage rate for the necessary scheduled time absent due to the funeral of a member of the immediate family. See Exhibit 6. The policy further provides that immediate family shall mean spouse, legally recognized partner, children, sister, brother, mother, father, former legal guardian, stepparents, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, grandmother, grandfather, grandson, granddaughter, stepson, stepdaughter, and parent of an employee's dependent child. See Exhibit 6.

On October 21, 2020, the asset protection team conducted its investigation and determined that the claimant violated the employer's Code of Business Conduct by falsification of company records. See Exhibit 1. The investigation also concluded that the claimant had failed to provide court dates on her employment application regarding criminal charges. See Exhibit 1.

In 2018, a warrant was issued for the claimant when she failed to appear. See Exhibit 8. In January of 2020, the claimant disclosed to the employer that she had a court date regarding the matter and needed time off of work. That time away from work was granted by the employer. On July 9, 2021, the claimant completed her job application and when asked whether she was currently awaiting trial for a criminal charge or any other violation, the claimant answered "no". See Exhibit 7. Claimant was unaware of any pending criminal charges against her at the time she completed the July 9, 2019 application.

Claimant's administrative records establish that she has received regular unemployment insurance benefits of \$13,085.87 beginning November 8, 2020. A fact-finding interview was conducted on January 14, 2021. The employer did not participate by telephone in the interview. The employer failed to provide any documentation regarding the specific policy violations that were alleged and a copy of the policy for the interviewer.

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, provided the claimant is otherwise eligible.

Iowa Code § 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.

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-related 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."** *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

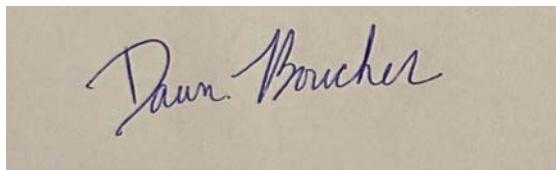
Mr. Kelly was a grandfather to the claimant. While he may or may not have been her blood relative, his role in her life was of "grandfather". The employer's policy does provide that leave for a grandfather is allowed. The word "grandfather" itself implies a biological relationship. Other relationships listed in the policy imply a biological or legal relationship. As such,

Mr. Kelly's role as "grandfather" does not appear to be a relationship where paid leave would be covered under the policy. However, even if the claimant committed misconduct, the misconduct must be substantial in order to justify the discharge from employment.

Claimant forwarded the memorial information to Ms. Kellam and clarified the biological relationship (or lack of) between herself and Mr. Kelly during the October 21, 2020 interview. Claimant's actions in misunderstanding the policy do not appear to be deliberate. If anything, claimant's actions were an isolated incident of poor judgment and claimant is guilty of no more than "good faith errors in judgment." 871 IAC 24.32(1)(a). Instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Services*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App. 1986). As such, benefits are allowed, provided the claimant is otherwise eligible. Because benefits are allowed, the issues of overpayment and chargeability are moot.

DECISION:

The January 25, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant remains otherwise eligible.



Dawn Boucher
Administrative Law Judge

April 19, 2021
Decision Dated and Mailed

db/scn