IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

GARRETT W WIMBERLY Claimant **ST AMBROSE UNIVERSITY** Employer	**APPEAL 19A-UI-02840-CL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/03/19** **Claimant: Respondent (2)**

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 March 26, 2019, (reference 01) unemployment insurance decision that allowed benefits based upon a separation from employment. The hearing notice was sent to the parties' last address of record. A telephone hearing was held on April 24, 2019. Claimant did not register for the hearing and did not participate. Employer participated through director of human resources Audrey Blair, director of athletics Raymond Shovlain, and director of athletic facilities Tony Huntley. Employer's Exhibits A through H were received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, 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: Claimant began working for employer on September 1, 2016. Claimant last worked as a full-time head lacrosse coach. Claimant was separated from employment on February 28, 2019, when he was terminated.

Employer has a business ethics policy. It requires all staff members to conduct themselves in an honorable and just manner. [Exhibit C] Claimant was aware of the policy.

As head lacrosse coach, claimant was responsible for fostering positive relationships with members of the campus community, other colleges, high schools, media, alumni, supportive business interests, Booster Club personnel, etc. Claimant was aware of this job requirement. [Exhibit B]

During his employment, claimant provided inaccurate information to student-athletes regarding the employer's financial aid policies and communicated unprofessionally with the students, parents, and financial aid department regarding the same issues on several occasions. On July 26, 2018, athletic director Ray Shovlain gave claimant a formal verbal warning regarding this conduct, which painted the University in a negative light. [Exhibit E]

Claimant scheduled a scrimmage with Cornell College on February 16 and 17, 2019. Claimant booked an indoor field at the Bett Plex for the scrimmage. Approximately one week prior to the scheduled scrimmage, claimant contacted the Bett Plex and cancelled the reservations stating that the team was going to use outdoor facilities instead. However, the outdoor field was not available due to being covered with snow. Claimant emailed the Cornell College coaching staff on Wednesday, February 13, 2019, to cancel the scrimmage. Claimant stated that the facility director and trainer would not allow the team to use the outdoor field and that groups who have exclusive rights to use the indoor facility at the Bett Plex had the facility reserved for the entire weekend. Cornell College was going to lose money on buses it had booked for the weekend and was very upset by the turn of events. Cornell College contacted the Bett Plex and was told that claimant had cancelled his reservation for the indoor facility one week earlier and it had since been booked, but no group had exclusive rights to use the facility. [Exhibit F]

On February 14, 2019, the athletic director from Cornell College contacted Shovlain and left a voice message complaining about claimant's misrepresentation and stating that Cornell College would not play lacrosse against employer's team as long as claimant was the coach. Shovlain played the voice message for claimant, who did not have much of a response.

Several teams cancelled games with employer's lacrosse team during early 2019 due to inadequate rosters and budget restraints. On February 17, 2019, claimant asked Shovlain if employer could ask the National Association of Intercollegiate Athletics (NAIA) to declare the games forfeited. Shovlain hesitated because he felt it was better practice to try to reschedule the games and remain harmonious with the teams. Claimant pushed back and Shovlain instructed claimant to complete the forfeit paperwork and send it to him. Shovlain further stated that after the paperwork was reviewed, they could forward it to the NAIA. Instead, claimant completed the paperwork on his own. In order to grant a forfeit request, the NAIA requires a copy of the contract between the teams. Claimant did not have a signed contract in three of the four games for which he was seeking a forfeit. Claimant completed the request forms and submitted them himself, without first sending the paperwork to Shovlain. The NAIA denied three of the four requests. The denials were sent to Shovlain. [Exhibit G]

On February 21, 2019, Shovlain made director of human resources Audrey Blair aware of the two situations.

After review, employer terminated claimant's employment on February 28, 2019.

Claimant has not received any payments of unemployment insurance benefits since filing this claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant was dishonest and unprofessional with outside organizations after having been warned. Claimant's conduct was in violation of employer's business ethics policy and his job description. Employer has established claimant was terminated for misconduct.

Because claimant has not received any benefit payments, the issues regarding overpayment are moot and will not be discussed further in this decision.

DECISION:

The March 26, 2019, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Christine A. Louis
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Decision Dated and Mailed

cal/scn