

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MONICA S ENGELBART**  
Claimant

**JW BELL LLC**  
Employer

**APPEAL 20A-UI-02256-CL-T**  
  
**AMENDED  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/23/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

On March 13, 2020, the claimant filed an appeal from the March 11, 2020, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on April 27, 2020. Claimant participated. Employer participated through accounting/human resource manager Teri Meis, project manager Todd Dimmer, and CEO Scott Cummings. Employer's Exhibits A through I were admitted into the record. Claimant's Exhibits 1 through 27 were admitted into the record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits?  
Was the claimant overpaid Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on November 29, 2016. Claimant last worked as a full-time purchasing agent. Claimant was separated from employment on February 21, 2020, when she was terminated.

In early January, employer made claimant an hourly employee instead of a salaried employee at the recommendation of a third-party auditor who was looking at wage and hour issues for employer. The transition was hard for claimant and she made it known she was unhappy.

Employer reviewed claimant's emails and saw that claimant was using her work email account to send emails that portrayed the work environment as negative. Claimant sent emails to vendors complaining about new rules in the workplace and referring to the job as "toxic." Claimant also forwarded emails from her supervisor and the human resource manager to her

husband and friend who did not work for the company. Claimant's friend often replied with derogatory comments about employer that were laced with profanity. For instance, on one occasion, claimant's friend referred to human resource manager, Teri Meis, as a "condescending bitch."

On January 24, 2020, project manager Todd Dimmer took claimant out for lunch. Dimmer told claimant that they knew she was very unhappy with her job and that they would help her look for other employment. Dimmer also told claimant that she needed to stop speaking negatively of employer and sending negative emails to third parties using employer's email address.

On February 19, 2020, human resource manager Teri Meis sent claimant an email asking her to spend less time on personal phone calls. Claimant forwarded the email to her friend and husband, who replied with profanity regarding Meis. Meis was monitoring the email and approached claimant about the issue. Meis did not have authority to terminate claimant.

Claimant was absent on February 20, 2020.

On February 21, 2020, employer terminated claimant's employment.

The administrative record reflects that claimant has received regular unemployment benefits in the amount of \$4,408.00, since filing a claim with an effective date of February 23, 2020, for the nine weeks ending April 25, 2020.

Since filing this claim, claimant has also received three payments of Federal Pandemic Unemployment Compensation for the gross, total amount of \$1,800.00.

#### **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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 is not 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 used employer's email address to send negative emails regarding the work environment to vendors. Claimant also forwarded emails from management to personal friends who would then mock the managers. Claimant denies Dimmer warned her about her behavior during the January 24, 2020, lunch. Even if Dimmer did not warn claimant, it is common sense that an employee cannot use an employer's email address to send derogatory emails regarding the work environment and management team—even if the management team is being unreasonable or rude. Any reasonable person would know that, if discovered, that type of conduct would result in termination. Here, employer established it terminated claimant for job-related misconduct.

The administrative law judge further concludes claimant has been overpaid regular unemployment insurance benefits.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5. . . .

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$4,408.00 pursuant to Iowa Code § 96.3(7) as claimant was not eligible for benefits after her disqualifying separation from employment.

The administrative law judge additionally concludes claimant has been overpaid Federal Pandemic Unemployment Compensation.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). In addition to the regular UI benefits claimant received, she also received an additional \$1,800.00 in FPUC benefits for the two week period ending April 18, 2020. Claimant is required to repay those benefits.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations may

qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

**DECISION:**

The March 11, 2020, (reference 01), decision is affirmed. The claimant was discharged from employment due to misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has been overpaid unemployment insurance benefits in the amount of \$4,408.00 and is obligated to repay the agency those benefits. Claimant was additionally overpaid \$1,800.00 in FPUC and is required to repay those benefits, as well.



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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

May 4, 2020  
Decision Dated and Mailed

cal/scn