

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**AMY MCDOWELL**  
Claimant

**APPEAL NO. 16A-UI-12583-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF DES MOINES PAYROLL  
DEPARTMENT B**  
Employer

**OC: 10/23/16**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

City of Des Moines (employer) appealed a representative's November 15, 2016, decision (reference 01) that concluded Amy McDowell (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 13, 2016. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Carol Moser, Deputy City Attorney, and participated by Linda Roe, Deputy Director of the Des Moines Public Library, and Sarah Scholten, Supervising Librarian at the Central Library. The employer offered and Exhibit 1 was received into evidence. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was originally hired on May 24, 1988. She quit eight months later. She worked again for the employer from 1993 to 1995. She was hired again in 2006, and at the end of her employment she was working as a part-time library assistant. The claimant signed for receipt of the employer's work rules on June 26, 2012. The work rules indicate a staff member may only renew a checked out item twice. If the employee loses an item they have checked out, another staff member must handle the lost item payment. Staff members must follow the standard overdue procedures. Fines are waived for staff members. When leaving employment, employees must return overdue items and pay for lost items before receiving a final paycheck.

On June 21, August 9, and August 16, 2016, the claimant renewed an item she had checked out from the library a third time. The claimant pushed a button on the computer to override the limit of two renewals. Each time she entered a comment that said she claimed to have returned

the item to the library. The claimant knew the items were lost at her home. On September 29, 2016, the employer discovered the claimant's actions.

On October 4, 2016, the employer met with the claimant and issued her a verbal warning after the claimant admitted to changing the status of the three items to "claimed return" and overriding the system to allow for a third renewal. On October 11, 2016, the employer met again with the claimant to talk about the situation. The employer told the claimant there would be a third meeting on October 14, 2016. The claimant continued to work through October 14, 2016. She found the three items and returned them to the library. On October 14, 2016, the employer terminated the claimant for manually overriding the system to allow for a third renewal, for not letting another staff member handle the lost item payment, not following the lost item procedures, not returning the items when they were due, and using the computer for her personal transaction.

The claimant filed for unemployment insurance benefits with an effective date of October 23, 2016. The employer participated personally at the fact finding interview on November 14, 2016, by Linda Roe.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer was discovered on September 29, 2016. The claimant was not discharged until October 14, 2016. The employer did not place the claimant on suspension. It allowed her to keep working for two weeks after discovery of the issue. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

**DECISION:**

The representative's November 15, 2016, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs