

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

APRIL D KHURAM
Claimant

FOCUS SERVICES LLC
Employer

APPEAL 20A-UI-00180-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/09/19
Claimant: Respondent (1)**

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/appellant filed an appeal from the December 26, 2019 (reference 03) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon her discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on January 31, 2020. The claimant, April D. Khuram, participated personally. The employer, Focus Services LLC, participated through witnesses Kodi McInerney, Demetrius Mack, Angie Greve and Karina Holt. Claimant's Exhibit A was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

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 beginning on June 18, 2019 until December 9, 2019 as customer service retention agent. Her job duties consisted of answering inbound calls to assist customers with cable and internet service.

On December 6, 2019, claimant was having issues rebuilding an account for a customer. She asked supervisor Tony Hickman for assistance. He directed her to a program named "co-pilot". Claimant attempted to follow the instructions in co-pilot but received error messages. She went to Ms. McInerney for assistance. Ms. McInerney instructed her to follow the instructions in co-pilot. Claimant explained to Ms. McInerney that the instructions were not working correctly and she was receiving an error message. Ms. McInerney attempted to correct the error message at the claimant's desk but was unable to do so and left. Claimant was able to figure out a work

around for the error message; however, it was not the correct way to rebuild the account. The claimant told Ms. McInerney that she was able to work around the error message and told her how she did it. Ms. McInerney told the claimant that was the incorrect way to rebuild the account. The two argued about whether the co-pilot instructions were the correct instructions to follow. The claimant did not use any profane language or threats of violence during the conversation. Claimant was also being investigated whether she called a supervisor a "liar" to other co-workers in November. Claimant did not call her supervisor a "liar" to other co-workers.

Claimant was discharged for disagreeing with Ms. McInerney on December 6, 2019. She was told she was being discharged on Friday, December 6, 2019 by Mr. Mack; however, when the claimant wrote out a statement about the circumstances, Mr. Mack agreed to hold off on a final separation decision until after claimant's written statement was reviewed by the Human Resources Department. He sent her statement to the Human Resources Department. On Monday, December 9, 2019, claimant was discharged for her actions on December 6, 2019.

Claimant had a previous suspension in August of 2019 for calling her supervisor a demon. Claimant had also received a suspension in October of 2019 for yelling at a customer over the phone.

Claimant has received \$975.00 in gross unemployment insurance benefits since filing her claim with an effective date of June 9, 2019. Ms. McInerney participated by telephone in the fact-finding interview by providing information to the interviewer regarding the separation from employment.

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).

Insubordination can manifest in several different ways. An employer has the right to expect an employee to follow reasonable directions. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Id.* Misconduct can be found when a claimant was discharged for refusing to complete job tasks after his shift because he created the extra job tasks by working too slow. *Boyd v. Iowa Dept. of Job Serv.*, 377 N.W.2d 1 (Iowa Ct. App. 1985). Continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). For example, the refusal of a prison guard to answer questions on his private drug use constitutes job misconduct since the prison's rule requiring him to disclose this information was necessary to the functioning of the prison system. *Ross v. Iowa State Penitentiary*, 376 N.W.2d 642 (Iowa App. 1985). However, if the request was unreasonable or the claimant had a good faith belief or good cause to refuse the request, no misconduct would be found. *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa Ct.App.1982)(an employee's failure to perform a

specific task may not constitute misconduct if such failure is in good faith or for good cause). An instruction is reasonable if it presents no hardship to the employee and no threat to his or her health, safety, or morals. *Endicott v. Iowa Dep't of Job Services*, 367 N.W.2d 300, 304 (Iowa App. 1985)(finding misconduct based on employee's unreasonable refusal to work overtime after employer's short-notice request).

In this case, the claimant followed co-pilot until she received an error message. She sought help from two separate supervisors on the issue. Claimant did not use any threats of violence or profane language on December 6, 2019. She was not disrespectful to her supervisors, she simply told them that the co-pilot instructions were not working. This is not considered insubordination.

The employer has failed to establish that the claimant engaged in a final incident of disqualifying job-related misconduct. As such, benefits are allowed, provided the claimant is otherwise eligible. Because benefits are allowed, the issue of overpayment is moot. The employer's account may be charged for benefits paid.

DECISION:

The December 26, 2019 (reference 03) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The employer's account may be charged for benefits paid.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn