

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARLA MATT
Claimant

APPEAL 18A-UI-06971-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOLON NURSING CARE CENTER
Employer

OC: 06/03/18
Claimant: Appellant (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 filed an appeal from the June 25, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2018. Claimant participated. Employer participated through administrator Melissa Reed and was represented by attorney Amanda Jansen. Employer's Exhibits 1, 2, 6, 7, 8, 9, 10, 14, and 15 were received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 15, 2014. Claimant last worked as a full-time human resource director. Claimant was separated from employment on June 6, 2018, when she was terminated.

Employer has a policy on expense reimbursement. The policy states as follows:

You must have your supervisor's authorization prior to incurring an expense on behalf of SNCC.

To be reimbursed for all authorized expenses, you must submit an expense report accompanied by receipts and approved by your department head. Please submit your expense report by the end of the month.

Claimant was aware of the policy.

Claimant took responsibility for Accounts Payable in approximately April 2017. Claimant noticed many checks were being issued for reimbursements in small amounts. Claimant asked administrator Melissa Reed if she could adopt and maintain a petty cash account to reimburse employees for small amounts, as opposed to issuing checks. Reed approved the request. Employer did not adopt a written policy governing the petty cash account or administration thereof. Employer did not put any official limit on the amount of reimbursements from the petty

cash account. Claimant had the authority to approve reimbursement requests from the petty cash account without any other supervisor's approval.

On March 9, 2018, claimant submitted a request for reimbursement in the amount of \$208.00 to her supervisor, Melissa Reed. Reed approved the request. However, later in March and through the end of her employment, claimant reimbursed herself directly from the petty cash fund without seeking Reed or any other supervisor's approval. Claimant left detailed paperwork supporting her requests, which ranged from \$6.00 up to \$78.48.

On June 6, 2018, administrator Melissa Reed reviewed the petty cash account and paperwork associated therewith. Reed noticed that claimant had been reimbursing herself from the account without a supervisor's approval. Reed did not find that claimant took any money to which she was not entitled. However, Reed questioned whether she could trust claimant in the future.

Employer terminated claimant the same day.

Claimant had never been previously warned for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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 in charge of the petty cash fund and reimbursed herself out of the fund on several occasions without first gaining her supervisor's approval. Employer did not have a written policy governing the administration of the petty cash fund and claimant was given discretion in approving reimbursement requests from the fund. Claimant had never been previously disciplined for her conduct. Claimant made no attempt to hide her conduct, as her reimbursement requests were included in the paperwork for the petty cash fund. Claimant's actions were not in deliberate disregard of employer's interests as she did not take any property to which she was not entitled. The claimant in this matter is guilty of no more than "good faith errors in judgment." Iowa Admin. Code r. 871-24.32(1)(a). Such good faith instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Service*, 479 N.W.2d 308 (Iowa 1991).

Since claimant is qualified to receive benefits based on this separation from employment, the issues regarding overpayment of benefits are moot and will not be discussed further in this decision.

DECISION:

The June 25, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
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Decision Dated and Mailed

cal/scn