

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PETER M SHADLE**  
Claimant

**BATH & BODY WORKS LLC**  
Employer

**APPEAL 20A-UI-00990-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/22/19**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
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:**

On February 3, 2020, the employer filed an appeal from the January 23, 2020, (reference 02) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 18, 2020. Claimant participated personally and through witness Janna Shadle. Employer participated through store manager Jolene Slaymaker and was represented by Thomas Kuiper. Employer's Exhibit 1 was received.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid 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 began working for employer on September 1, 2019. Claimant last worked as a full-time assistant manager. Claimant was separated from employment on December 20, 2019, when he was discharged.

On December 20, 2019, claimant was scheduled to open a Bath & Body Works retail store at 9:00 a.m. As assistant manager, claimant had a set of keys that unlocked the store. All other managers also had a set of keys, in addition to a spare set of keys that was kept in the store safe.

At 12:27 a.m., claimant sent store manager Jolene Slaymaker a text message stating, "I won't be in to work tomorrow. I will bring the store keys asap. Thank you and good night."

At 7:46 a.m., Slaymaker responded, "Okay." Slaymaker then notified her district manager of the text message. The district manager notified the human resource department. The human resource department interpreted the text message as claimant resigning without notice.

Slaymaker opened the store.

At 10:11 a.m., claimant sent a text message stating:

What I meant to say last night is that I am sick and I wont [sic] be able to be at work this morning. It came out like I was quitting my job. But I was not meaning it that way. I will be at work tomorrow for my shift and wont text anymore because it seems to always come out wrong. It was just late and I was suppose [sic] to open. I thought it best to reach out to you asap. Thank you. I will be there tomorrow.

Slaymaker called claimant and asked why he stated he would bring in the store keys if he was not resigning as his keys would not be needed to open the store even if he was absent. Claimant stated he would speak to the human resource department about the issue, but denied having any intent to resign. Slaymaker gave claimant the telephone number for the human resource department. Claimant called the human resource department and explained he did not intend to resign. The human resource department stated it would look into the issue, but never got back with claimant.

The district manager had previously instructed Slaymaker not to communicate by text message with claimant because the messages were often misconstrued. The district manager instructed Slaymaker to communicate with claimant by telephone.

Claimant had never been previously disciplined for attendance issues.

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

The first issue is whether claimant resigned or was discharged by employer. The employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In this case, claimant sent employer a cryptic text message late at night regarding his store keys and attendance at work the next day. It was not reasonable for employer to interpret the message as a resignation without following up for clarification, especially given the district manager's previous instruction to Slaymaker not to communicate with claimant by text message. When claimant followed up to clarify his message, he was adamant that he had no intent to resign. While claimant may have not provided a clear explanation for his comment regarding the store keys, he was consistent in stating he had no intent to resign in every follow-up communication he had with employer. Employer failed to establish claimant had the intent to resign and took a clear, overt action to accomplish that intent.

This case will be analyzed as a discharge.

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 was absent for only one day. Whether the absence was due to illness or because he did not have his store keys, the result remains the same. Employer had never previously disciplined claimant for any similar conduct and one unexcused absence is not

excessive. Claimant may also be guilty of being a poor communicator, but employer has failed to establish the miscommunication and one absence equates to misconduct.

Claimant's separation from employment does not disqualify him from receiving unemployment insurance benefits. Therefore, the issues regarding overpayment are moot and will not be discussed further in this decision.

**DECISION:**

The January 23, 2020, (reference 02) 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.



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Christine A. Louis  
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February 25, 2020  
Decision Dated and Mailed

cal/scn