

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

NICK THIELSEN
Claimant

APPEAL NO: 20A-UI-11505-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

S R CORP
Employer

OC: 06/07/20
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 11, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 12, 2020. The claimant participated in the hearing. Jamie Ramey, Manager and Dipen Patel, General Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

ISSUES:

Whether the employer discharged the claimant for work-connected misconduct as defined by Iowa law and whether he is overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked as a full-time front desk clerk for S R Corp (Baymont Inns and Suites) from November 21, 2019 to February 24, 2020. He was discharged for fraud and theft for misusing the rewards card issued to him by the employer.

Employees are prohibited from putting guests' rewards points on their personal rewards cards. The claimant received a verbal warning in November 2019 for using his personal reward card to get points from guests on several occasions.

On February 19, 2020, the employer's fraud department observed that the claimant put his Wyndom number (173745948G) on several accounts and also received points from guests at the hotel, neither of which is allowed. The fraud department emailed the general manager stating the claimant "received points for stays completed by other guests at your hotel. Per the Terms and Conditions of the program, to earn Wyndham Rewards points, a member must be a registered guest at a Participating Hotel. Seeing that this account violated the Terms and Conditions of the program, we have suspended it" (Employer's Exhibit One).

The email continued that the claimant “collected 15,042 points on their Wyndham Rewards account. There are 3,173 bonus points and 2,088 other hotel stay points on their account that your hotel did not pay for. He also redeemed 7,500 points and unfortunately those points cannot be recovered. That leaves 2,281 points remaining on the account that were credited from your property that cost your hotel \$11.41 which you can be credited” (Employer’s Exhibit One). “For reference, the 7,500 points redeemed from the account cost your property \$37.50” (Employer’s Exhibit One)

“Wyndham Rewards will be closing this account as per our Terms and Conditions that states: Fraud or abuse of either Program by Members is subject to administrative and/or legal action by the respective Sponsor including, but not limited to in the case of Wyndham Rewards, termination of the Member’s account, forfeiture of all accrued Wyndham Rewards points, airline miles or rail points, and /or cancellation of any previously issued points” (Employer’s Exhibit One).

Later that day the employer received another email from the fraud department regarding a Jeff Hefler using the claimant’s rewards account number to gain points. “Mr. Hefler” was also using the claimant’s PO Box in Ogden. “Mr. Hefler” collected 34,535 points on the claimant’s Wyndham Rewards account. “There are 4,979 bonus points on that account that your hotel did not pay for. He also redeemed 22,500 points and unfortunately those points cannot be recovered. That leaves 7,056 points remaining on the account that were credited from your property that cost your hotel \$35.28 which you can be credited” (Employer’s Exhibit Two).

The employer’s policy states that, “Anyone caught stealing anything from the hotel or guest will be terminated immediately” (Employer’s Exhibit Three). The claimant signed acknowledging receipt and understanding of the handbook on November 21, 2019 (Employer’s Exhibit Four).

The claimant denies using the rewards card in an inappropriate manner or creating Jeff Hefler, knowing of Jeff Hefler, staying in any of the employer’s hotels using his rewards card or using any points for cash purchases online.

The claimant has claimed and received unemployment insurance benefits in the amount of \$1,508.00 for the 22 weeks ending November 7, 2020.

The employer did not receive notice of the fact-finding interview and did not receive a phone call for the fact-finding and did not know it was taking place.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 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 disqualification shall continue 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 of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While the claimant denies all accusations, the Wyndham fraud department noticed a great deal of activity on the claimant's rewards account in November 2019 and the claimant received a verbal warning. Despite that warning, however, the claimant's behavior persisted and in February 2020 the Wyndham fraud department's attention was again drawn to the claimant's rewards account. The claimant was putting customer's reward points on his account and redeemed his points for hotel stays and merchandise. He also had a second name on his account, Jeff Hefler, whose address was the same PO Box in Ogden the claimant uses. When the employer confronted the claimant about the situation February 24, 2020, the claimant said he was sorry and left the premises. He did not deny fraudulently using the card or argue his innocence. The claimant's actions were fraud and theft, both of which violate the employer's policy prohibiting such behavior.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its

burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant.

Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

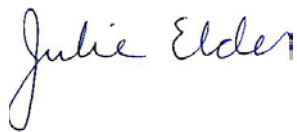
The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer’s account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and the employer failed to participate in the fact finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits. Benefits were paid but not because the employer failed to respond timely or adequately to the agency’s request for information relating to the payment of benefits. Instead, benefits were paid because the employer did not receive notice of a call from the Department. The employer thus cannot be charged. Since neither party is to be charged, the overpayment is absorbed by the Fund.

DECISION:

The September 11, 2020, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant received benefits in the amount of \$1,408.15 for the 22 weeks ending November 7, 2020, but is not obligated to repay the Department those benefits. The employer did not participate in the fact-finding interview through no fault of its own and its account shall not be charged. Instead, the overpayment shall be charged to the Fund.



Julie Elder
Administrative Law Judge

November 20, 2020
Decision Dated and Mailed

je/scn