

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACY M WALBAUM
Claimant

APPEAL 15A-UI-11670-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHECK INTO CASH OF IOWA INC
Employer

**OC: 10/26/14
Claimant: Respondent (2)**

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 October 12, 2015 (reference 05) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 12, 2015. Claimant participated. Employer participated through representative John O’Fallon and regional manager Kristie Villalpando. Brittany Joy was present on behalf of the employer but did not participate. Employer’s Exhibit One was admitted into evidence without objection. Employer’s Exhibit Two was admitted into evidence without objection.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the Agency be waived?

Can 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 as a customer service representative from April 1, 2015 and was separated from employment on August 28, 2015; when she was discharged.

The employer provides short term loans for a maximum of 31 days. When a customer gets a loan from the employer, the customer signs a contract and gives the employer a personal check as collateral for the loan. To pay off the loan, the customer can come back into the employer and pay cash, or have the employer deposit their personal check. Under Iowa law, a customer’s transactions cannot exceed \$500 in one day; including holding the loan or paying back the loan. The maximum amount the employer can loan to customer is \$500 until the loan is paid off. The employer is also required to have a contract with its customer. A violation of state law may result in a shutdown of the company or a fine for the company. Claimant

received training on the state law. The employer also has standards of conduct (Employer's Exhibit One). One of the standards of conduct requires employees to safeguard company funds (Employer's Exhibit One). Claimant received the standards of conduct in the employee handbook (Employer's Exhibit One).

On August 14, 2015, a customer called the employer and asked to have their personal check for \$500 to be deposited to pay off the customer's loan. The customer spoke with the claimant. Claimant told customer it would be taken care of. Claimant did not deposit the customer's check until August 15, 2015. Because claimant deposited the check on August 15, 2015, the customer could not obtain another loan from the employer until the next business day of August 17, 2015. The customer came into claimant's location on August 15, 2015, to obtain another loan. Claimant tried to process the loan through the computer but the computer rejected the loan because the twenty-four hours had not passed. Claimant knew the computer was not going to let her process the loan because the amount would exceed \$500 on that day for the customer and it would be against state law. When the loan did not process, claimant just gave the customer \$445 in cash from the employer without a contract. Because of this, the employer's accounting was short (claimant gave out \$445 without taking any collateral in return from the customer) on August 15, 2015. On August 17, 2015, the customer came into the employer and claimant processed the August 15, 2015 loan. The customer signed a contract and a personal check was taken as collateral. At the end of the day on August 17, 2015, the employer should have shown an overage (claimant took a \$500 check as collateral and gave nothing out), but at the end of the day there was no overage. The employer has still not been able to find the missing \$445. The incident was not found until the accounting department discovered it and reported it to the district manager on August 28, 2015. The district manager spoke with claimant about the incident. Claimant admitted to the district manager that she had given the \$445 to the customer without a contract on August 15, 2015 (Employer's Exhibit One).

The administrative record reflects that claimant has received unemployment benefits in the amount of \$822 since filing a claim with an effective date of October 26, 2014; for the six weeks ending October 24, 2015. The administrative record also establishes that the employer did participate in the fact-finding interview or make a first-hand witness available for rebuttal or provide written documentation that, without rebuttal, would have resulted in disqualification (Employer's Exhibit One and Two).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibits submitted. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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).

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).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer provides short term loans to its customers. The employer must follow state law when providing these loans. Although claimant had only be working for the employer

since April 2015, she was aware of the maximum amount that could be loaned to a customer, that a written contract with the customer was required, and that once a certain amount had been processed/deposited for the customer nothing more could be done until the next business day. Yet, claimant willfully ignored the state law on August 15, 2015. Prior to the customer coming in for a loan on August 15, 2015, claimant deposited the customer's check for \$500 that morning to pay of the customer's loan. Because claimant had deposited the customer's check on August 15, 2015, claimant knew she could not give the customer another loan until the next business day (August 17, 2015). However, when the customer came in on August 15, 2015, claimant attempted to process another loan for the customer. Claimant knew the computer would reject the loan and when the loan was rejected, claimant took it upon herself to give the customer \$445 in cash from the employer without securing a contract from the customer. Claimant then let the customer leave with the employer's \$445 in cash. It is not persuasive that the customer ultimately came into the employer and signed a contract when claimant processed the loan on August 17, 2015. There was no guarantee that the customer would return or sign a contract for a loan on August 17, 2015. Claimant knew this violated state law and she failed to safeguard the employer's money in violation of the employer's standards of conduct (Employer's Exhibit One). Furthermore, this situation was aggravated when the employer reviewed the accounting from August 15 and 17, 2015 and found \$445 missing. The employer still has not been able to determine where this money went.

The employer is charged under state law with following specific rules when providing short term loans. The employer has presented substantial and credible evidence that claimant was acting against the best interests of the employer and in violation of state law and the employer's standards of conduct on August 15, 2015 and August 17, 2015. This placed the employer at risk of being shut down or being fined. This is misconduct without prior warning. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

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 un rebutted 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.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10. In this case, the claimant has received benefits but was not eligible for those benefits. Since the employer did participate in the fact-finding interview the claimant is obligated to repay to the Agency the benefits she received and the employer's account shall not be charged.

DECISION:

The October 12, 2015 (reference 05) unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The claimant has been overpaid unemployment insurance benefits in the amount of \$822 and is obligated to repay the Agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

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