

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBRA R NICHOLSON
Claimant

HY-VEE INC
Employer

APPEAL 21A-UI-00700-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/27/20
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:

On December 10, 2020, the employer filed an appeal from the December 3, 2020, (reference 01) 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 10, 2021. Claimant participated. Employer participated through human resource generalist Jenny Paullin, director of customer care Carey Lenning, and senior customer care supervisor Heather Walker, and was represented by Barbara Buss. Employer's Exhibit 1 was received.

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 began working for employer on November 4, 2013. Claimant became a full-time customer care representative in May 2016. Claimant was separated from employment on September 24, 2020, when she was terminated.

Employer has a policy that prohibits customer service representatives from changing a customer's password. The policy was adopted after a customer data breach in August 2019 that resulted in litigation and possible liability for employer. Under employer's policy, only the customer can change the password by clicking on the "reset password" button on employer's website. If a customer is having difficulty resetting their password, customer service representatives are required to contact the IT department for assistance. Customer service supervisors are allowed to change a customer's password, but only after undergoing a series of troubleshooting steps. Claimant was aware of the policy. Employer sent continual written

reminders of the policy, but did not explicitly state a person could be terminated for violating the policy.

In March 2020, the United States declared a public health emergency due to the COVID 19 pandemic. At some point after this, claimant began working from home. Employer was extremely busy with online customers, and it often took claimant quite some time to get help from a supervisor or the IT department if a customer was having issues with their password.

On September 18, 2020, claimant was on the phone with a customer who was having difficulty logging into employer's customer website. Claimant changed the customer's password on the website in an attempt to help the customer gain access to the website. Claimant did not contact the IT department or a supervisor before doing so. After this did not work, claimant contacted a manager for help and disclosed that she reset the password for the customer.

On August 24, 2020, employer terminated claimant's employment. Claimant had never been previously disciplined for similar conduct. Employer takes its customers' privacy so seriously that it terminates employees upon a first time offense of violating this policy.

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.

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).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was an isolated incident of poor judgment while attempting to help a customer during a stressful period in time. Employer had not previously disciplined claimant regarding the conduct, and although it had made its policy on resetting passwords clear, it did not explicitly warn claimant that violating the policy one time would result in termination. Inasmuch as claimant was trying to help a customer, she did not act with deliberate disregard of employer's interests. Employer failed to establish claimant was terminated for misconduct.

Because the separation is not disqualifying, benefits are allowed. Claimant has not been overpaid benefits.

DECISION:

The December 3, 2020, (reference 01) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.



Christine A. Louis
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February 22, 2021
Decision Dated and Mailed

cal/mh