

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAELA R ALLEN
Claimant

APPEAL 20A-UI-00437-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 12/15/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On January 15, 2020, Michaela Allen (claimant) filed an appeal from the January 10, 2020 (reference 01) unemployment insurance decision that found she was not eligible for benefits.

A telephone hearing was held on February 3, 2020. The parties were properly notified of the hearing. The claimant participated personally. Casey's Marketing Company (employer) participated by Store Manager Aren Mears.

Employer's Exhibits 1-5 were admitted.

ISSUE:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time store employee. Claimant's first day of employment at the current store was April 2, 2014. Claimant had previously worked at another store in Carlisle for approximately seven and a half years. The last day claimant worked on the job was December 12, 2019. Claimant's immediate supervisor was Mears. Claimant separated from employment on December 13, 2019. Claimant was discharged by Mears on that date.

Claimant was discharged for using her rewards account for customer transactions. See Exhibits 2, 4. Employer had recently started a new rewards program. Claimant would show customers how to sign up for the rewards program and the benefits of doing so. If a customer had not yet signed up for or did not wish to use the program, the customer would offer to let claimant claim the rewards points for the customer's transactions. Claimant had approximately 100 such transactions from December 6-8, which was flagged by employer's corporate headquarters and reported to Mears. See Exhibit 3. Claimant knew most or all of these customers from her many years of employment at the store.

Employer determined claimant's conduct violated its honesty and integrity policy. See Exhibit 1. Specifically, employer believed claimant was essentially stealing customers' rewards points or otherwise using points she was not entitled to use. Claimant was aware of the honesty and integrity policy. See Exhibit 5. However, the policy does not explicitly address claimant's conduct.

Claimant and other employees had been trained on the new rewards program. However, the training did not include a prohibition on the conduct claimant engaged. Claimant had mentioned to Mears and another manager that she was using customers' rewards points with their permission. Neither Mears nor the other manager advised claimant that she could not do this. In fact, claimant had been awarded employee of the month the night prior to her discharge for her good work in educating customers and coworkers on the new rewards program.

Claimant had never been disciplined for conduct of the same or similar nature prior to her discharge. Claimant did not believe she was doing anything wrong and did not believe her job was in jeopardy prior to her discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the January 10, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits is REVERSED. Claimant is eligible for benefits, so long as she meets all other eligibility requirements.

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 provides in relevant part:

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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). As such, claimant is not disqualified from receiving benefits.

Claimant reasonably believed that she was not doing anything wrong by using customers' points with their permission. No policy prohibited it, and claimant had not been advised not to do so by the two managers she had spoken with about it. While this administrative law judge understands why employer may not wish for employees to engage in the conduct claimant engaged in, claimant's conduct did not violate any policy or directive. Furthermore, employer's characterization of it as theft is not accurate. This is because claimant had permission from the customers who would have otherwise received the rewards points to take and use them for herself. Finally, claimant did not seek to conceal or deny her conduct. In fact, she openly discussed it with her managers and freely acknowledged it when confronted. This is strong evidence that claimant had no intention to act in violation of claimant's honesty and integrity policy or otherwise deceive employer and its customers.

DECISION:

The January 10, 2020 (reference 01) unemployment insurance decision is REVERSED. Claimant is eligible for benefits, provided she meets all other eligibility requirements.

Andrew B. Duffelmeyer
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Decision Dated and Mailed

abd/scn