

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**DENYSE LOGUE**  
Claimant

**APPEAL NO: 19A-UI-05573-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PILOT TRAVEL CENTERS LLC**  
Employer

**OC: 06/09/19**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 3, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 6, 2019. The claimant participated in the hearing. Gabe Grieco, General Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cardholder/shift leader for Pilot Travel Centers from June 12, 2015 to June 7, 2019. She was discharged for conducting a credit card transaction over the phone in violation of the employer's policies.

On June 1, 2019, the claimant received a phone call from an individual claiming to be from the corporate office. The individual said it needed the claimant's help in checking how it processed a credit card and to see that the card processed correctly at the corporate office. The claimant processed five separate cards on two transactions for a total of \$1,893.77 which cost the employer a loss of money and assets. The employer's policy prohibits accepting or processing credit card payments over the phone without the guest being present in the store. Consequently, the employer terminated the claimant's employment June 7, 2019.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

An individual tricked the claimant into thinking he was from the corporate office and as part of the scam had the claimant process five credit cards. While the employer's policy prohibits the acceptance or processing of payments over the phone without a guest present, this situation did not purport to involve a customer but rather the corporate office. The claimant was led to believe the individual on the phone needed assistance with how the employer processed the credit cards and she went through that process believing she was helping the corporate office. She did not know she was effectively assisting the caller in committing theft from the employer. The claimant was the victim of this con as was the employer. Under these circumstances, the

administrative law judge must conclude the claimant's actions do not constitute intentional job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The July 3, 2019, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn