

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SHARON L LOSO**  
Claimant

**APPEAL 18A-UI-05257-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE COUNTY**  
Employer

**OC: 04/08/18  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
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/appellant filed an appeal from the April 26, 2018 (reference 01) unemployment insurance decision that allowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on May 18, 2018. The claimant, Sharon L. Loso, participated personally. The employer, Dubuque County, participated through witness Emily Gosche. Chris Kirsch observed the hearing on behalf of the employer. Employer's Exhibits 1 – 6 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any 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 an assistance finance director. Claimant was employed from November 24, 2014, until her employment ended on April 11, 2018. Claimant's direct supervisor at the time of separation from employment was Emily Gosche.

This employer operates an Intermediate Care Facility for the Intellectually Disabled ("ICF/ID") that receives Medicaid payments. Prior to April 1, 2016, the employer was required to pay an ICF/ID fee to Medicaid; however, the fee was automatically taken out of the payment before it was transferred to the facility. Claimant's job responsibilities prior to April 1, 2016 included

auditing the payments to ensure the correct fee was taken out of the employer's payments that it received.

Effective April 1, 2016, Iowa Medicaid Enterprise ("IME") was no longer going to be able to recoup the ICF/ID assessment fee prior to payment and the facility was required to remit the fee for the assessment directly to IME. See Exhibit 3.

Claimant received a letter via email on or about January 22, 2016 regarding the general changes to how fees were to be remitted. See Exhibit 2. Claimant printed this letter and promptly gave it to her supervisor, Michelle Patzner. Ms. Patzner was the Finance Director at this time. Claimant received another informational letter about the change in how the assessment was to be paid on or about March 14, 2016, which she promptly printed and gave to Ms. Patzner. Claimant received another informational letter about the change in how the assessment was to be paid on or about June 23, 2016, which she promptly printed and gave to Ms. Patzner. Claimant received another informational letter about the change in how the assessment was to be paid on or about November 4, 2016, which she promptly emailed to Ms. Patzner.

Ms. Patzner was required to file cost reports regarding the program. Ms. Patzner told the claimant that she would work with the new Finance Director and Chris Kirsch to determine what the new payment process would be. Ms. Patzner also told the claimant that she had arranged to set funds aside in order to pay the ICF/ID assessment fees going forward.

Ms. Patzner, nor any supervisor, ever instructed claimant that it would now be part of her job duties to make the new payment for these fees to IME. Ms. Patzner left her employment with this employer December of 2017 and her position was never filled.

Claimant received a letter on or about March 9, 2018 regarding the employer's suspension from participation in the IME program due to non-payment of the fees. She emailed a copy of this letter to Ms. Gosche and Ms. Kirsh. Claimant was discharged from employment for failing to pay the ICF/ID assessment fee from April 1, 2016 to present.

Claimant has received \$1,365.00 in unemployment insurance benefits from April 8, 2018 through May 12, 2018. Employer did participate in the fact-finding interview.

#### **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. Benefits are allowed.

As a preliminary matter, the administrative law judge finds that the Claimant did not quit. Claimant was discharged from employment.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). 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).

Claimant was never instructed by any supervisor that she was responsible for making payments of the ICF/ID assessment fees directly to IME. Claimant was told by her supervisor, Ms. Patzner that she would discuss it with the new Budget Director and Ms. Kirsch. After Ms. Patzner left in December of 2017, there was no one hired to take her place.

While claimant’s job duties previously consisted of auditing the ICF/ID fees to ensure that the proper amount was being deducted prior to the employer’s receipt of payment, this task is very different than making an actual payment to IME out of a separate fund that claimant was never specifically informed about. Because claimant was never instructed to pay the ICF/ID fee by any supervisor or other person in management, her failure to do so can in no way be a breach of her duties and obligations arising out of her contract of hire.

The employer has failed to meet its burden of proof in establishing a current act of disqualifying job-related misconduct. As such, benefits are allowed. Because benefits are allowed, the issue of overpayment of benefits is moot. The employer’s account may be charged for benefits paid.

**DECISION:**

The April 26, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs