

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CELETIA M CLAYBORNE
Claimant

THOMAS L CARDELLA & ASSOCIATES
Employer

APPEAL 19A-UI-00198-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/09/18
Claimant: Appellant (2)

Iowa Code §96.5(2)a – Discharge Misconduct
Iowa Admin. Code r. 871- 24.32(1)a – Discharge Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 31, 2018, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for dishonesty in connection with her work. The parties were properly notified about the hearing. A telephone hearing was held on January 24, 2019. Claimant participated and testified. Employer participated through Hearing Representative Amelia Gallagher and witnesses Myca Gilchrist and Mark Grego.

ISSUE:

Was claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on February 6, 2017. Claimant last worked as a full-time customer care agent. Claimant was separated from employment on December 12, 2018, when she was discharged.

On December 4, 2018, the quality assurance team brought to the claimant's supervisor's attention a call from November 27, 2018. Individuals in claimant's position are responsible for contacting customers to see if they are interested in saving money or refinancing their mortgages. If the customer indicates they are, the customer care agent then transfers the customer to a licensed mortgage professional. If the customer and licensed mortgage professional connect and exchange words the call is logged as a sale. If either is disconnected from the call before the two are able to speak a note is made to call the customer back, but it is not logged as a sale. Employees received commissions and their performance is evaluated, in part, on their number of sales. The quality assurance team found, on November 27, 2018, claimant logged a call as a sale, when the customer disconnected before actually speaking with the mortgage professional.

A meeting was held with claimant on December 4, 2018. Claimant explained she had several issues going on in her personal life and must not have been paying attention to how she was logging things. Claimant was issued a written coaching and advised that she needed to be more careful to log her calls accurately. After the coaching meeting the employer conducted an audit of all claimant's calls and discovered there were several other calls in the month November, prior to the November 27 call, where she incorrectly logged sales. The employer then determined that the coaching was not sufficient and discharged claimant from employment. None of the other violations occurred after claimant received the December 4, 2018 coaching. She had no disciplinary action prior to that date.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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 impose discipline up to or including discharge for the incident under its policy.

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 issue involving claimant's incorrect coding of calls was brought to the employer's attention on December 4, 2018. Claimant was issued a coaching and directed not to engage in similar behavior going forward. There were no incidents after the December 4 warning. Inasmuch as the employer had warned claimant about the final incident on December 4, 2018 and there were no incidents of alleged misconduct thereafter, it has not met the burden of proof to establish that claimant acted deliberately or negligently after the most recent warning. The employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The December 31, 2018, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs