

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AUSTIN J DES LAURIERS
Claimant

AT&T MOBILITY SERVICES LLC
Employer

APPEAL 19A-UI-08189-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/22/19
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On October 21, 2019, the claimant filed an appeal from the October 17, 2019, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on November 7, 2019. Claimant participated. Employer participated through area retail sales manager Jacob Redenbaugh and senior investigator of asset protection Suzanne Casteel and was represented by Marlene Sartin. Employer's Exhibit 1 was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in Fall 2011. Claimant last worked as a full-time retail store manager. Claimant was separated from employment on September 26, 2019, when he was terminated.

Employer has a Code of Business Conduct. The Code of Business Conduct states that employees must keep accurate records and cannot manipulate data to gain favorable sales. Claimant was trained on the Code of the Business Conduct annually.

Employer sells DirecTV (DTV) to retail customers. In order to buy DTV, a customer must submit a credit application. The outcome of the credit check determines whether the customer will be required to submit a deposit. The credit applications were submitted by store employees on customers' behalf. An employee could manipulate the credit score by resubmitting an application and altering information on subsequent applications. For instance, an employee could use a generic social security number, modify first and last names, and modify the customer's address in order to obtain a more favorable score.

Around June 10, 2019, an employee reported that a manager and store employees were falsifying DirecTV (DTV) orders to increase sales at a retail location in Davenport, Iowa. Employer opened an investigation and assigned it to Suzanne Casteel.

Casteel requested information on DTV sales at the store from January 1 through June 13, 2019. Casteel reviewed 1655 credit applications for DTV made at the store during that time period. Casteel found that 952 of the credit applications showed patterns of suspected manipulations by store employees in order to receive a more favorable credit score on the customer's behalf.

Casteel found that claimant submitted 32 credit applications that appear to have been manipulated to obtain a more favorable credit score. Casteel interviewed claimant about these allegations. Claimant then signed a written statement in which he admitted to manipulating customer's data to obtain a more favorable credit rating and observed his subordinate employees doing so as well. Claimant admitted that the conduct was prohibited and in violation of employer's Code of Business Conduct.

Casteel also interviewed two of claimant's subordinate employees who also admitted to engaging in the same conduct.

Casteel concluded claimant was aware of the employees' conduct because she reviewed credit applications that were first submitted by an employee, and then altered and resubmitted by claimant on the same date.

Casteel concluded her investigation on September 17, 2019.

Employer terminated claimant's employment on September 26, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

In this case, claimant manipulated customer data in order to make more DTV sales. Claimant knew his conduct violated employer's Code of Business Conduct. Claimant was also aware his subordinate employees were acting in the same manner. As store manager, claimant was responsible for enforcing and modeling compliance with company policies. Employer established claimant's conduct was recurring and in disregard of employer's best interests. Therefore, employer established claimant was terminated for misconduct.

DECISION:

The October 17, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn