

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ASHLEY B JONES**  
Claimant

**CBE COMPANIES INC**  
Employer

**APPEAL 19A-UI-03345-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/07/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On April 22, 2019, the claimant filed an appeal from the April 12, 2019, (reference 04) unemployment insurance decision that denied benefits based on her discharge for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on May 13, 2019. Claimant participated and testified. Employer participated through Director of Operations Misty Reinard. Amanda Gantois and Justin Mehmen were also present on behalf of the employer but did not testify. Employer's Exhibit 1 through 6 were received into evidence.

**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 on October 22, 2018. Claimant last worked as a full-time collector. Claimant was separated from employment on March 25, 2019, when she was discharged.

When claimant was hired she was assigned to work on an account for the Department of Education. Claimant was given training, which including information on various scripts to follow depending on the circumstances of the call. The scripts are specifically designed to meet standards set by the Department of Education and the Fair Debt Collection Practices Act. Employees are not allowed to go off of or omit portions of the script. Calls are monitored and regularly reviewed, with points being issued if the employee fails to follow the script.

On March 13, 2019, claimant was issued a written warning for accumulating 15 points for failing to follow the script during various calls. (Exhibit 2). On March 22, 2019, after a consumer called to complain, claimant received a second written warning for failing to follow the script. (Exhibit 3). The complaint was in regards to a voicemail claimant had left for the consumer requesting specific documentation. Such requests are prohibited and not called for in the script.

At the time the warning was issued claimant was advised that if there were any more incidents where she failed to follow the script, she would be discharged from employment.

On March 25, 2019, the employer conducted one of their regular reviews of claimant's calls. The employer discovered, during a call occurring on March 14, 2019, claimant omitted an entire section of a script outlining settlement options. Claimant was subsequently discharged from employment, as the employer has a policy providing for discharge after three warnings. (Exhibits 4 and 5).

### **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 claimant was issued her final warning on March 22, 2019. The final incident for which claimant was discharged occurred on March 14, 2019, though the employer was not aware of it until March 25, 2019. Thus, while the employer warned claimant on March 22, 2019 that any further incidents of failing to follow the script would result in termination, the final incident had already occurred. As there were no incidents of alleged misconduct after the March 22 warning, the employer has not met the burden of proof to establish that claimant acted deliberately or negligently after the most recent warning. Accordingly, benefits are allowed.

**DECISION:**

The April 12, 2019, (reference 04) 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.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs