

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHEYENNE J SCOTT
Claimant

APPEAL NO. 18A-UI-03709-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SALLY BEAUTY SUPPLY LLC
Employer

OC: 02/18/18
Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 12, 2018, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on February 1, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on April 17, 2018. Claimant Cheyenne Scott participated. Kistey Mahncke represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1, 2 and 3 into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant was overpaid benefits.

Whether the claimant must repay overpaid benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cheyenne Scott was employed by Sally Beauty Supply, L.L.C. as a part-time sales associate at the employer's Waterloo store from February 2017 until February 1, 2018, when the employer's corporate human resources personnel discharged her from the employment. Kistey Mahncke, Store Manager, notified Ms. Scott of the discharge decision. Ms. Mahncke was Ms. Scott's immediate supervisor.

At the start of the employment, the employer had Ms. Scott review an employee handbook that the employer kept at the Waterloo store. The employer did not provide Ms. Scott with a copy of the handbook. The employer had Ms. Scott sign her acknowledgement of receipt of the handbook and her obligation to read and familiarize herself with the content of the handbook. The employee discount policy set forth in the handbook prohibited employees from ringing up sales to themselves or any family member. The handbook section titled Terminable Conduct included the following:

Use of another employee's Personal Identification Number (PIN) or disclosure of one's PIN to a person not authorized to have the number. This includes those PINs associated with the Point of Sale Register, alarm access codes, or other types of pass codes used in any electronic transaction.

Ms. Scott was at all relevant times aware of both policies.

On the evening of January 21, 2018, Ms. Scott and another part-time sales associate, Sarah Danforth, were working at the Waterloo store without a supervising manager. As they were preparing the store for closing at the end of the business day, each desired to make a personal purchase. As Ms. Danforth mopped nearby, Ms. Scott asked Ms. Danforth if she could use Ms. Danforth's PIN to ring up Ms. Scott's purchase. Ms. Danforth had shared her PIN with Ms. Scott a couple months earlier so that Ms. Scott could clock Ms. Danforth out while Ms. Danforth was working in the backroom. Ms. Danforth's PIN was a number that Ms. Scott found easy to remember. Ms. Danforth assented to Ms. Scott using her PIN to ring up her transaction. Ms. Scott rang up her own purchase using Ms. Danforth's PIN. Ms. Scott then used her own PIN to ring up Ms. Danforth's purchase. Ms. Danforth subsequently discussed the incident with Lisa Jurgensen, Assistant Manager, and Ms. Jurgensen alerted Ms. Mahncke.

On January 22, 2018, Ms. Mahncke sent Ms. Scott a text message asking whether she had used Ms. Danforth's PIN to ring up her purchase. Ms. Mahncke directed Ms. Scott to call her as soon as possible. Ms. Scott called Ms. Mahncke as directed. During the call, Ms. Scott told Ms. Mahncke that she had used Ms. Danforth's PIN to ring up her own purchase. Ms. Mahncke told Ms. Scott that the matter was serious and could result in Ms. Scott being discharged from the employment. Ms. Mahncke directed Ms. Scott to provide a written statement concerning the incident. Ms. Scott provided her written statement to Ms. Mahncke on January 24, 2018. Ms. Danforth also provided a written statement. Ms. Scott forwarded both statements to the employer's corporate human resources personnel. The corporate human resources personnel decided that Ms. Scott would be discharged from the employment, but that Ms. Danforth would only receive a written reprimand. On January 31, 2018, Ms. Mahncke prepared a corrective action form that discharged Ms. Scott from the employment. When Ms. Scott arrived for work on February 1, Ms. Mahncke presented Ms. Scott with the corrective action form and each signed the form.

In making the decision to discharge Ms. Scott from the employment, the corporate human resources personnel may or may not have considered previous reprimands issued to Ms. Scott for attendance.

Ms. Scott established an original claim for unemployment insurance benefits that was effective February 18, 2018 and an additional claim for benefits that was effective March 4, 2018. In connection with the additional claim, Ms. Scott has received \$1,524.00 in benefits for the six-week period of March 4, 2018 through April 14, 2018. Sally Beauty Supply is Ms. Scott's most recent base period employer.

On March 9, 2018, an Iowa Workforce Development representative held a fact-finding interview that addressed Ms. Scott's separation from the employment. Ms. Mahncke participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

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 proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Administrative Code rule 871-24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes a discharge based on misconduct in connection with the employment. On January 21, 2018, Ms. Scott elected to violate two employer policies that were in place to protect the employer from employee theft. The employer had properly notified

Ms. Scott of the policies and Ms. Scott was fully aware of the policies. Ms. Scott knowingly and intentionally violated the policy that prohibited her from ringing up her own purchase. Ms. Scott knowingly and intentionally violated the policy that prohibited her from using a coworker's PIN to ring up a sale. Despite the absence of actual theft from the employer, Ms. Scott's violation of the policies demonstrated an intentional and substantial disregard of the employer's interests. The discharge was based on a current act. The conduct came to the employer's attention on January 22, 2018 and the employer notified Ms. Scott that same day that the conduct could trigger her discharge from the employment. Because the evidence establishes a discharge for misconduct in connection with the employment, Ms. Scott is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Scott must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received benefits, but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$1,524.00 in benefits for the six-week period of March 4, 2018 through April 14, 2018. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid to the claimant.

DECISION:

The March 12, 2018, reference 01, decision is reversed. The claimant was discharged on February 2, 2018 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant was overpaid \$1,524.00 in benefits for the six-week period of March 4, 2018 through April 14, 2018. The claimant is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs