

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TYLER J IDLE**  
Claimant

**DOLGENCORP LLC**  
Employer

**APPEAL 18A-UI-02974-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/21/18**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
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 filed an appeal from the February 21, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 2, 2018. Claimant participated. Marie Schwartz participated on claimant's behalf. Employer participated through district manager Jim Musser. The employer offered Employer Exhibit 1 into evidence. Claimant objected to Employer Exhibit 1 because it contained hearsay, the dates were incorrect and had been modified. Claimant's objection was overruled and Employer Exhibit 1 was admitted into evidence. Official notice was taken of the administrative record with no objection.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can 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 a lead sales associate from September 9, 2017, and was separated from employment on January 20, 2018, when he was discharged.

On December 10, 2017, the employer gave claimant two disciplinary warnings. Employer Exhibit 1. One warning was for due to inaccurate deposits on six occasions. Employer Exhibit 1. The other warning was a verbal warning for not completing certain tasks. Employer Exhibit 1. Claimant testified he did not have enough time to complete the tasks because he was busy with his other duties.

On December 22, 2017, the employer gave claimant a written warning for refusing to work with a particular employee. Employer Exhibit 1. On December 17, 2017, claimant had discussed with the assistant manager (Felicia Ewoldt) about working with a particular employee. During this conversation, the assistant manager told claimant that he would not have to work with this particular employee anymore and the schedule would be changed. The assistant manager told claimant that because the schedule was being changed, he may have to work longer on December 18, 2017 (claimant was scheduled to work with the employee on December 18, 2018). When claimant came to work on December 18, 2017, the assistant manager had not changed the schedule and the employee was working. Claimant then refused to work on December 18, 2017. Employer Exhibit 1.

On January 3, 2018, the employer gave claimant a final warning for not completing certain tasks on January 2, 2018. Employer Exhibit 1. Claimant testified he did complete all of his tasks on January 2, 2018.

The final incident that led to discharge occurred on January 19, 2018. Employer Exhibit 1. On January 19, 2018, claimant had been required to unload and stock three containers. Claimant was to perform these tasks along with his other cashier and closing duties. Claimant was aware he was required to unload and stock three containers on January 19, 2018, but he was the only employee working on January 19, 2018 that was able to run the cash register. Claimant was only able to unload and stock one of the containers because he was too busy running the cash register that night. Claimant did not stay late on January 19, 2018 to finish unloading and stocking the other two containers because the assistant store manager had previously instructed him that he is required to be clocked out and done working by the time he is scheduled to be off work. The assistant store manager told claimant he is not allowed to work past his scheduled work time and he cannot work off the clock. Claimant testified on January 19, 2018 he was performing his job duties to the best of his ability. On January 20, 2018, the store manager (Anna Murphy) and the assistant store manager told claimant he was discharged for not completing all his tasks on January 19, 2018. Employer Exhibit 1. Mr. Musser testified that claimant was not able to consistently perform his job duties over a sustained period of time during his employment. Mr. Musser testified claimant did not meet the employer's expectations.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit that was admitted into evidence. This administrative law judge finds claimant's version of events to be more credible than the employer's recollection of those events.

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).

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(5) provides:

**Discharge for misconduct.**

**(5) Trial period.** A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

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). 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). Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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.

Claimant provided credible, first-hand testimony that on January 20, 2018, he was the only employee that was able to run the cash register and he was performing his job duties to the best of his ability. Claimant also credibly testified he was unable to complete his required tasks on January 19, 2018, because of his other job duties. Although claimant had multiple prior warnings, including a final written warning, regarding his job performance (failure to complete tasks), the employer did not present any evidence that claimant "demonstrated a wrongful intent on his part." *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986). Furthermore, Mr. Musser testified that claimant had never had a sustained period of time during which he performed his job duties to employer's satisfaction and inasmuch as claimant did attempt to perform the job to the best of his ability but was unable to meet its expectations, no intentional misconduct has been established, as is the employer's burden of proof. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The employer has failed to meet its burden of proof in establishing disqualifying job misconduct. Benefits are allowed.

As benefits are allowed, the issues of overpayment, repayment, and the chargeability of the employer's account are moot.

**DECISION:**

The February 21, 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. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs