

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN L WEST**  
Claimant

**APPEAL NO. 16A-UI-06878-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRS MANAGEMENT GROUP LLC**  
Employer

**OC: 05/15/16**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

CRS Management Group (employer) appealed a representative's June 7, 2016, decision (reference 01) that concluded Brian West (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 29, 2016. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Kathy Wallace, Human Resource Manager. The employer offered and Exhibit One was received into evidence. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 18, 2016, as a full-time canvasser. The employer has canvasser policies. One of the policies lists excessive failed or cancelled contributions as grounds for termination. It is unclear whether the claimant received the policy. The employer did not issue the claimant any written warnings during his employment.

On March 30, 2016, the employer noticed that the claimant had a high number of failed payment information. The employer thought the claimant should possibly receive a warning. The supervisor did not consider it to be fraud. She thought the claimant was having people fill out their own payment information. The supervisor agreed to talk with him. The employer noted that it was impossible to enter invalid credit card numbers into the mobile device.

On April 1, 2016, the employer retrained the claimant and others regarding canvassing. The claimant continued to work. He signed up folks who later cancelled their credit cards or cancelled their memberships. On April 26, 2016, the employer looked at the statistics from April 4 to April 21, 2016. On April 28, 2016, the employer terminated the claimant for having eleven cancellations due to the collection of eleven incorrect credit card numbers.

The claimant filed for unemployment insurance benefits with an effective date of May 15, 2016. The employer provided the name of Kathy Wallace as the person who would participate in the fact-finding interview. The fact finder called Kathy Wallace but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided documents for the fact finding interview. The employer did not identify the dates of the particular circumstances that caused the separation. It did not submit the name and number of an employee with firsthand information that could be contacted for rebuttal.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore

not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The employer terminated the claimant for collecting eleven incorrect credit card numbers after it said in an email that it was impossible to enter invalid credit card numbers into the Mobile Canvasser. The claimant's poor work performance was a result of his lack of training.

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's June 7, 2016, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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