

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHARLENE K WOOLDRIDGE
Claimant

SCE PARTNERS LLC
Employer

APPEAL 15A-UI-09668-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 19, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 14, 2015. Claimant participated along with her witness Jessica John. Employer participated through (representative) Kim Dellinger, Human Resources Director and Josh Cartee, Cage Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a casino service representative beginning on June 11, 2015 through July 31, 2015, when she was discharged.

The claimant ended up with a variance, shortage in her cash drawer on July 24 in the amount of \$2984.80. The employer watched her entire shift on surveillance video and reviewed and audited her complete paperwork. The employer was never able to determine where the shortage came from. There is no evidence that the loss was the claimant's fault or responsibility or that she did or failed to do any act that was prohibited or required. The employer simply has not been able to determine how the loss occurred.

Around two days after the claimant's loss, her supervisor had a two-thousand dollar variance, loss and she was not discharged, but was transferred out of the financial department. The supervisor was treated differently because she had been an employee for more than one year, and because the claimant was still in her 90-day probationary period.

On June 24, the claimant had failed to follow the check-cashing policy and missed that the endorsement signature was not the same names as the person the check was made out to as payee. The check was not honored by the bank. The employer made their decision to

discharge on the final incident, the variance, shortage of almost three-thousand dollars not the claimant's failure to follow the check-cashing polices.

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 § 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). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351

N.W.2d 806 (Iowa App. 1984). 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).

There is no doubt that the employer is missing three thousand dollars. However, there is simply no credible evidence that the claimant is responsible for the loss. Even with surveillance video of the claimant for her entire shift, for each transaction, the employer has not been able to identify what, if any error the claimant made. 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, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer has not met their burden of proof to establish that claimant committed any act of misconduct that led to the loss. Under these circumstances no final act of misconduct has been established and benefits are allowed.

DECISION:

The August 19, 2015 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css