

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEIDI L TAYLOR
Claimant

AUTOZONERS LLC
Employer

APPEAL 19A-UI-04247-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/28/19
Claimant: Respondent (1)**

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:

On May 15, 2019, Autozoners, LLC (employer) filed an appeal from the May 15, 2019, reference 01, unemployment insurance decision that allowed benefits based upon the determination Heidi L. Taylor (claimant) was discharged for not performing to the employer's expectations which is not willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on June 19, 2019. The claimant participated personally. The employer participated through Regional Loss Prevention Manager Jason Steffen. The department's Exhibit D1 was admitted into the record without 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: The claimant was employed full-time as a Store Manager beginning on June 24, 2012, and was separated from employment on April 29, 2019, when she was discharged. The employer has policies related to cash handling and a code of conduct.

Regional Loss Prevention Manager Jason Steffen received notice from the claimant's employees that the cash at the store she managed was not always balancing at the end of the night and that not all deposits were made in a timely fashion. On April 3, 2019, Steffen and an associate went to the claimant's store to perform an audit and interview the claimant about the issues. The claimant's safe was short \$20.00 and a drawer was over by \$20.00. During her interview, the claimant acknowledged there were times she had a change order and she took money with her to return it the following day. She also acknowledged this was a violation of the

employer's policies. The claimant was not told that her conduct could result in the end of her employment and she was allowed to continue managing the store.

On April 10, Steffen concluded his investigation and emailed his report to Corporate Human Resources in Minnesota. He then traveled back to the corporate office and delivered the supporting documentation the following day. Corporate Human Resources took a day or two to review his report and then forwarded it to the Regional Manager to determine what steps to take with regard to the claimant's employment. The Regional Manager made the decision to discharge the claimant. On April 29, the District Manager notified the claimant that her employment was ending. There was a delay in making a decision because there is a small corporate staff overseeing a large region and people have other matters to handle or time out of the office.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,289.00, since filing a claim with an effective date of April 28, 2019, for the seven weeks ending June 15, 2019. The administrative record also establishes that the employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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

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 provides, in relevant part:

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.

...

(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.

This definition of misconduct 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).

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. 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

To be disqualifying, the misconduct must also be based on a current act. A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." Where an employer gives seven days' notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011). A lapse in time may be allowed when the employer can show good cause for the delay.

In this case, the employer was aware of the alleged misconduct on April 3. The investigation into the incidents was completed on April 10. The claimant was not discharged for an additional two and a half weeks. She was allowed to continue working and was never notified that the conduct could result in her discharge. The employer has not established that it had good cause for the delay in discharging the claimant. Because the act for which the claimant was discharged was not current and the claimant may not be disqualified for past acts of misconduct, benefits are allowed. The employer has not met its burden of proof to establish a current or final act of misconduct, and, without such, the history of other incidents need not be examined.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

DECISION:

The May 15, 2019, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs