

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLY D KASETER
Claimant

GOOD SAMARITAN SOCIETY INC
Employer

APPEAL 18A-UI-05639-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/22/18
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:

The employer filed an appeal from the May 7, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 19, 2018. The claimant, Kelly D. Kaseter, participated. The employer, Good Samaritan Society, Inc., participated through Julie Cowling, Regional Executive Director; and Brenda Sanchez, HR Consultant. Employer's Exhibits 1 through 4 were received and 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: Claimant was employed full-time, most recently as an account executive, from April 27, 2015, until April 23, 2018, when she was discharged. On February 22, claimant told the administrator that she would be in the office later that day. Claimant explained that she works from home but is required to report to the office at least one day each week. Claimant never ended up going into the office that day. She claimed to have worked ten hours of work. On April 23, 2018, the employer learned that claimant claimed ten work hours on February 22. Therefore, it discharged her. The employer did not interview claimant or ask her about these ten claimed hours prior to discharging her.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$4,472.00, since filing a claim with an effective date of April 22, 2018, for the eight weeks ending June 16, 2018. The administrative record also establishes that the employer did

participate in the fact-finding interview. Lois Tonelli and Willa Jean Gibson both participated in the fact-finding interview.

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, provided she is otherwise eligible.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the 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.

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. Here, claimant provided unrefuted testimony that she worked from home on February 22, 2018. The employer has not presented any testimony or evidence that she was not permitted to work from home or that she did not actually perform work that day. The employer has not met its burden of showing that claimant was discharged for disqualifying, job-related misconduct. Therefore, benefits are allowed. As claimant's separation from employment is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The May 7, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn