

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PATTI JACOBSON**  
Claimant

**PILOT TRAVEL CENTERS LLC**  
Employer

**APPEAL 21A-UI-06130-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/27/20**  
**Claimant: Respondent (1)**

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Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 16, 2021, (reference 01) unemployment insurance decision that granted benefits based upon the record did not show work-related misconduct. The parties were properly notified of the hearing. A telephone hearing was held on May 5, 2021. The claimant did not participate. The employer participated through Travel Center Manager Kim Roudabush. Exhibits 1-5 were admitted into the record.

**ISSUES:**

1. Whether the claimant's separation from employment was disqualifying?
2. Whether the claimant is overpaid benefits? Whether the employer's non-participation in fact finding excuses her from repaying the benefits she received?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Patti Jacobson, was employed by the employer, Pilot Travel Centers, full-time as a guest service lead II from May 9, 2019, until this employment ended on December 8, 2020, when she was terminated. The claimant's immediate supervisor was Travel Center Manager Kim Roudabush.

The employer has a policy regarding cash control and check cashing. This policy states that no agent of the employer will ever ask a team member to process out of store transactions over the phone. The policy forbids any transaction of this nature being authorized by an employee. It states that failure to comply with this policy can result in disciplinary action up to termination. (Exhibit 3)

On December 6, 2020, the claimant's drawer was short \$368.60. Earlier that day, the claimant received a phone call from someone identifying themselves as an employee of the employer's

corporate headquarters. They asked the claimant to load a prepaid card with \$368.60 to verify the prepaid card was working. The claimant ignored the prompt on her register stating she needed to verify the identity of the person making the request prior to fulfilling the request.

On December 8, 2020, Ms. Roudabush terminated the claimant's employment because this constituted her second policy violation. During the termination meeting, the claimant emphasized she sincerely believed the person she was speaking to was an agent of the employer.

The claimant had not been disciplined under the cash control and check cashing policy in the past. The only other discipline the claimant received was for violation of the mask use policy on November 19, 2020. The claimant received a final written warning for this incident. (Exhibit 2) The employer provided a copy of the mask use policy. (Exhibit 1)

The employer did not participate in the fact finding. Ms. Roudabush is not aware if the employer received a notice of fact finding.

### **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 section 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

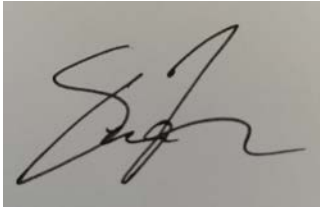
In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability 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.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment. To the extent that the circumstances surrounding each accident were not similar enough to establish a pattern of misbehavior, the employer has only shown that claimant was negligent. "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016).

The claimant had not received discipline under the cash control and check cashing policy in the past. The employer is not alleging she engaged in theft either. Ordinary negligence is all that is proven here. Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided claimant is otherwise eligible. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Since benefits are allowed the issue regarding whether the claimant was overpaid benefits is moot.

**DECISION:**

The February 16, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'S. Nelson'.

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Sean M. Nelson  
Administrative Law Judge  
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Fax (515) 725-9067

May 14, 2021  
Decision Dated and Mailed

smn/scn