

Iowa Department of Inspections and Appeals  
Administrative Hearings Division  
Wallace State Office Building, Third Floor  
Des Moines, Iowa 50319

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|--------------------------------|---|---------------------------------|
| Cathy Schafer,                 | ) |                                 |
| 511 South 12 <sup>th</sup> St. | ) | DIA Case No. 18IWDUI0034        |
| Adel, IA 50003,                | ) | IWD Appeal No. 18A-UI-03795     |
|                                | ) |                                 |
| Appellant,                     | ) | <b>ADMINISTRATIVE LAW JUDGE</b> |
|                                | ) | <b>DECISION</b>                 |
| v.                             | ) |                                 |
|                                | ) |                                 |
| Iowa Workforce Development,    | ) | OC: 02/25/2018                  |
|                                | ) | Claimant: Appellant (1)         |
| Respondent.                    | ) |                                 |

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Iowa Code section 96.5-2 – Cause for disqualification

**STATEMENT OF THE CASE**

The Claimant Cathy Schafer (“Schafer”) filed an appeal from a March 16, 2018, decision (Ref. 01) by the Iowa Workforce Development (“IWD”) finding she was ineligible for unemployment insurance benefits because she was terminated for misconduct in the form of “violation of a known company rule.” The hearing commenced on April 13, 2018; however, it was continued until April 17, 2018, because the exhibits Schafer intended to submit had not reached the Tribunal. At the hearing on April 17, 2018, both parties called witnesses and submitted all documents. IWD was represented by Nicholas Olivencia. The entire administrative file, including all of the exhibits and post hearing materials submitted by the parties, was entered into the record. The only exceptions were a recording of a telephone call, which was removed from the record without objection in favor of a redacted transcript of the call that had confidential information removed, and unredacted IWD exhibits which were substituted without objections for redacted exhibits. The matter is now fully submitted.

**ISSUE**

Whether IWD properly determined Schafer was ineligible for unemployment insurance benefits because she was discharged by IWD for misconduct in connection with her employment.

**STATEMENT OF FACTS**

On January 26, 2018, an unemployed individual contacted his representative for assistance with some difficulty he was having with IWD. Schafer Ex. 2, at p. 1. The individual was a seasonal employee and had been for well over a decade, and as is true in his profession, he was laid off during his off-season and seeking employment insurance benefits. Id. Unlike in past years, he was having difficulties with his application this year. Id.

Unbeknownst to the representative, this individual had repeatedly contacted IWD to resolve the matter, and the interactions were strained to the point IWD placed a notice in its electronic system called “KLOG” that “[a]ll calls from this claimant to go to management.” Schafer Ex. 2, at p. 2; IWD Ex., at p. 34. IWD also sent an email to all of its call center staff, including Schafer, on January 16, 2018, that “[i]f the claimant call, please notify you manager.” IWD Ex., at p. 26. Credible testimony in this case establishes relatively few cases have this instruction attached to them.

The representative knew Schafer and her family for decades and knew Schafer worked for IWD assisting individuals with difficulties concerning unemployment insurance benefits. Schafer Ex. 2, at pp. 1-2. The representative decided to contact Schafer to see if he could give this person Schafer’s work contact information, and Schafer agreed noting this person should ask for Cathy S. since there are other Cathies in the office. Id., at p. 2. Of note, Schafer told the representative that, if this person’s “claim is marked to go through Management, then she can’t do anything for him.” IWD Ex., at 33. At this time, Schafer did not know who the individual was, and all parties agree the representative did not ask or in any way request or imply Schafer violate any IWD rules. Schafer Ex. 2, at p. 2. Instead, the intention was simply to give this person specific contact information at IWD to see if the problem could be resolved.

On Monday, January 29, 2018, this individual called IWD’s general line asking for Cathy S. IWD Ex., at p. 33. The IWD staff that fielded the initial call discovered the individual’s identity and refused to make the transfer in light of the rule requiring all conversations be directed to management, prompting this person to hang up and the IWD staff member to send an email to IWD management concerning the contact. Id., at p. 29. This email was sent to Schafer’s immediate supervisor with instructions to see “if Cathy has been taking with him/assisting him.” Id. In the meantime, the person called back at least twice more and was eventually was transferred to Schafer. Id., at p. 28.

The call between Schafer and this individual lasted approximately sixteen minutes. The transcript of the call, which the Tribunal finds credible, reveals Schafer asked this person for his name and social security number, which were provided. Id., at p. 38. During this time, this individual identified himself as the person who contacted the representative Schafer knew and asked for permission to speak with Schafer since law enforcement had told him he would be arrested for harassment and/or trespass if he contacted or otherwise came to IWD’s offices. Id., at pp. 38-39. Of note, Schafer inadvertently failed to ask for the other information, such as date of birth, required to verify identity. Id., at p. 35 (noting all of the verification requirements).

Although the precise timing is not known, the transcript from the call reveals that Schafer accessed KLOG and learned that only management was to be speaking with this person, as she stated seven or so minutes into the call that “actually there’s a comment in here that all calls from you go to management. It’s noted.” Id., at p. 43. Schafer continued to assist with this individual’s claim, as she discussed what this person needed to do and appeared to change IWD information concerning this person stating she was “pulling up the form” and she would be putting some information “back on” Id., at p. 44, 45. Towards the end of the call, Schafer’s manager indicated he needed to speak with her, and Schafer ended the call with this person by stating: “I hate to cut this short, . . . but I think my manager knows I’m on a phone call with you. He’s asking me to come to his office.” Id., at p. 49.

After this call, IWD management spoke with Schafer about what had occurred. Id., at p. 28. An investigation in the matter was initiated after it was determined Schafer's account did not align with the recorded telephone call. Id. On February 1, 2018, Schafer was interviewed, and a transcript from the recording reveals Schafer stated she checks her emails when she is off work, as was the case the Friday before the date of the call, to ensure she is aware of any individual who can only speak to management. Id., at p. 54. She denied seeing the January 16, 2018, email concerning the person. Id., at p. 65. She also stated:

When I was – after talking to him, I went into KLOG and looked after I told him his claim was fixed and fine, and then I looked on KLG, and though “Oh, crap, there’s a note.” And then I tried to get him off the phone as fast as I can, and then the guy just kept going on and on, I’m listening to the guy, and it’s like – it’s getting old, and then [her manager] comes around and sked me to come see him, so I got off the phone. Told him, “I had to go. I have – my manger needs to see me. I have to go see my manger.” And I hung up.

Id., at p. 60. She further questioned why management would allow the call to be transferred to her, and she stated she did not transfer the person because she had already fixed his claim by the time she learned of the KLOG instruction. Id., at pp. 12, 70. Schafer also stated that portions of the recording were missing. Id., at p. 46. Additional statements were also made.

On February 16, 2018, IWD conducted a second interview of Schafer. During that interview, IWD inquired whether Schafer followed the appropriate verification procedure, and Schafer stated that she did. Id., at p. 3. Schafer also reiterated she did not see any email about this individual and made further statements about the matter. Id., at p. 116.

Ultimately, IWD decided to terminate Schafer. On February 23, 2018, IWD issued a termination letter stating it was terminating Schafer for: (1) failing to properly verify the person's identity; (2) failing to promptly transfer this person to management upon learning of his identity; (3) accessing this person's claim information without a legitimate business purposes as there was instructions to only have management deal with this individual; and (4) not being honest in the investigation. Id., at p. 133. Thereafter, Schafer applied for unemployment benefits, and IWD denied them in a decision dated March 16, 2018, finding she was ineligible for unemployment insurance benefits because she was terminated for misconduct in the form of “violation of a known company rule.”

Schafer appealed. At the hearing, Schafer argued she did not engage in any misconduct because she had already fixed this individual's problem by the time she learned of the instruction to send him to management and she thought there was no need to after the problem was resolved. Schafer further argues that the unusual circumstance of having this person transferred to her despite management instructions provides sufficient justification for her to have fielded the call. Schafer further claims that she was honest to the best of her ability during the interviews, and the few instances IWD pointed out where her answers were not correct just indicates she was confused. Schafer suggests she would have no incentive to lie because she knew that the conversation was recorded, and she suggests not only are the recordings of the events are materially incomplete or erroneous but also she was being targeted by IWD.

In response, IWD argues she did commit misconduct because she was insubordinate in that she failed to transfer the call to management without any sufficient extenuating circumstances and she was repeatedly dishonest during the investigation. For support, IWD relies not only the apparent variations of her account in the transcripts, all of which the Tribunal finds credible as being an accurate representation of what was said, and her variation in some of testimony at the hearing. Of note, Schafer did appear to provide adequate service to this individual and assist him with his outstanding difficulties with IWD.

## **CONCLUSIONS OF LAW**

### **A.**

“The purpose of [Iowa’s] unemployment compensation law is to protect from financial hardship workers who become unemployed through no fault of their own.” Bridgestone/Firestone, Inc. v. Employment Appeal Bd., 570 N.W.2d 85, 96 (Iowa 1997). As a result, the governing employment provisions “should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment.” Cosper v. Iowa Dept. of Job Service, 321 N.W.2d 6, 10 (Iowa 1982).

As part of the statutory framework, an individual is disqualified from receiving unemployment benefits when he or she has been discharged for “misconduct.” Iowa Code § 96.5(2). “Misconduct” is defined by the governing regulations to be “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.” 871 Iowa Administrative Code § 24.32(1)(a); see also Freeland v. Employment Appeal Board, 492 N.W.2d 193, 196 (Iowa 1992) (noting that “the agency rule definition is an accurate reflection of legislative intent”). In explaining what this means, the governing regulation states:

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.

871 I.A.C. § 24.32(1). Summarizing this, “[m]isconduct must be substantial in order to support a disqualification from unemployment benefits.” Henry v. Iowa Dept. of Job Service, 391 N.W.2d 731, 734 (Iowa App. 1986).

For failing to follow instructions, Iowa courts have long held “an employee’s failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause.” Woods v. Iowa Dep’t of Job Serv., 327 N.W.2d 768, 771 (Iowa Ct. App. 1982). Key considerations are both the reasonableness of the employer’s request and the employee’s refusal in light of the circumstances at the time of the refusal. Endicott v. Iowa Dep’t of Job Serv., 367 N.W.2d 300, 304 (Iowa Ct. App. 1985). The

tests for reasonableness is objective and does not depend upon the subjective impressions and feeling of an individual. Aalbers v. Iowa Dep't of Job Serv., 431 N.W.2d 330, 336 (Iowa 1988). Circumstances that have been found to create good cause to refuse an employer's instructions include harassment, safety, and confusion as to what was being required, while circumstances that have been found to be insufficient include modest requests for overtime. Woodbury Cty. v. Employment Appeal Bd., 683 N.W.2d 127 (Iowa Ct. App. 2004); Bruce v. Employment Appeal Board, 1999WL 7755986 (Iowa Ct. App. Sept. 29, 1999); Pierce v. Iowa Dep't of Job Serv., 425 N.W.2d 679, 681 (Iowa Ct. App. 1988); Woods, 327 N.W.2d at 771; Endicott, 367 N.W.2d at 304.

Importantly, “[m]isconduct serious enough to warrant discharge of an employee is not necessarily serious enough to warrant denial of unemployment benefits.” Henry, 391 N.W.2d at 734. In fact, “[w]hat constitutes misconduct justifying termination of an employee, and what is misconduct which warrants denial of unemployment benefits are two separate decisions.” Brown v. Iowa Dept. of Job Service, 367 N.W.2d 305, 306 (Iowa App. 1985). By statute, “[t]he employer has the burden of proving a claimant is disqualified for benefits.” Bartelt v. Employment Appeal Bd., 494 N.W.2d 684, 686 (Iowa 1993) (citing Iowa Code § 96.6(2)).

## **B.**

In this case, Schafer's decision to not transfer the individual to management as required proves dispositive of this case. Her failure to properly verify this individual's identity is incapable of giving rise to misconduct given it was an isolated incident, some verification occurred, and no intent existed to disregard the remaining portions of the verification protocol. There is no need to reach the issue of whether any erroneous statements she made during the investigation were sufficient to be misconduct. White v. Employment Appeal Bd., 448 N.W.2d 691, 692 (Iowa Ct. App. 1989) (noting lack of candor can constitute misconduct).

With respect to transferring the person to management, IWD first established a clear rule in its KLOG system that “[a]ll calls from this claimant to go to management.” Schafer Ex. 2. There absolutely no discretion in this directive, and Schafer understood that such requirements were mandatory, as she told the representative prior to the call that, if this instruction were in the system, she could not work on the claim. IWD Ex., at 33. Neither the representative nor anyone else instructed or suggested she should not follow such an imperative, which is reserved for a small subset of cases thereby revealing the significance of the designation. Second, Schafer continued to work on this individual's claims after she became aware of the instruction because she noted the KLOG instruction to the individual on the phone and still then proceeded to pull up at least one form and make sure at least some information was “back on.” Id., at p. 44, 45. Indeed, the conversation continued for a substantial period of time after she informed this individual of the KLOG instruction and ended with Schafer effectively admitting to this person she was engaging in prohibited conduct by stating: “I hate to cut this short, [ ] but I think my manager knows I'm on a phone call with you. He's asking me to come to his office.” Id., at p. 49. In short, Schafer intentionally violated this rule, and in so doing, she engaged in misconduct because she was not acting in objectively reasonable good faith and did not have good cause.

Schafer was not acting in good faith and did not have good cause when deciding not to transfer this individual to management because there was no justifiable reason to not simply end the conversation

and make the transfer. Schafer claims she had already fixed the problem by the time she read the KLOG instruction and made the comment on the telephone call, but this is undermined in part by her continuing to do things on the file and instruct the individual. Schafer also effectively argues she was acting in good faith because the call should not have been transferred to her and, by so being transferred, she thought she had sufficient reason to assist the individual. However, how she ended the conversation, what she told the representative before the call about not being able to work on certain claims referred to management, and the imperative nature of the KLOG instruction again undercut this. It is true that Schafer appeared to provide at least adequate customer service to this individual, and she did not intend to take any action that would result in the erroneous payment of benefits. However, she did not have the authority to speak with him, and she knew it. In choosing to override her employer's instructions, she committed misconduct. This case is not like those where there is confusion as to what was required, a concern over harassment, or a safety risk against her. As such, IWD's decision is AFFIRMED.

### **DECISION**

IWD's decision is AFFIRMED. IWD shall take all necessary measures to effectuate this decision.

Dated and mailed this April 19, 2018.



Jonathan M. Gallagher  
Administrative Law Judge

cc:

Emily Chafa, IWD UI Appeals Manager (By Email)  
Nicholas Olivencia, IWD (By Email)  
Joni Benson, IWD (By Email)  
Kevin Melcher, IWD (By email)  
Brenda Boten, IWD (By email)  
Ryan West, IWD (By email)

### **APPEAL RIGHTS**

**This decision shall become final agency action unless the Appellant or any interested party appeals to the Employment Appeal Board within fifteen (15) days** after the date of this decision by submitting a signed letter or a signed written Notice of Appeal by mail, personal delivery, or fax to:

Employment Appeal Board  
Lucas State Office Building, 4th Floor  
Des Moines, Iowa 50319  
(515) 281-7191 (fax)

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

An appeal to the Employment Appeal Board must:

- Include the name, address, and social security number of the claimant;
- Reference the decision from which the appeal is taken;
- Clearly state that an appeal from such decision is being made;
- Clearly state the grounds upon which such appeal is based; and
- Be signed by the party appealing.

On appeal to the Employment Appeal Board, the Appellant may represent himself or herself or may obtain the assistance of an attorney or another representative at the Appellant's own expense. The Appellant may qualify for free legal assistance from Iowa Legal Aid. To apply, call Iowa Legal Aid at **(800) 532-1272** or visit **[www.iowalegalaid.org](http://www.iowalegalaid.org)**. More information about obtaining legal advice is also available on the Administrative Hearings Division website at **<http://dia.iowa.gov/ahd/>**. The claimant should continue to file weekly claims for unemployment insurance benefits while the appeal is pending. A claimant can only receive benefits for the weeks he or she filed a valid claim.