

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUDITH A CASEY

Claimant

APPEAL 20A-UI-02422-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOMGAARS SUPPLY INC

Employer

OC: 02/23/20

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On March 13, 2020, the claimant filed an appeal from the March 10, 2020, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on April 29, 2020. Claimant participated. Employer participated through benefits administrator Barb Bohlke.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 3, 2014. Claimant last worked as a full-time assistant manager. Claimant was separated from employment on February 24, 2020, when she was terminated.

Employer has a policy stating that all money found on company property should be given to management. Employer also has an ethical conduct policy. It states that if a situation arises where it is difficult to determine the appropriate course of action, the employee should consult with a supervisor. Claimant was aware of the policies.

On February 5, 2020, a customer purchased a money order from Wal-Mart in the amount of \$475.00. The customer paid cash for the money order. The customer then went to employer's store to shop. Later that day, the customer came back and asked the store manager, Rob, if anyone found a money order. The customer believed he lost it at employer's store. Rob told the customer that no one had turned his money order in. Claimant and another employee, Jodi Rettig, were working at employer's store that day and did not get off of work until the late evening hours.

Employee Rettig found the customer's money order. Rettig informed claimant she found the money order. Since it was paid for in cash, it did not have the customer's name on it. Claimant and Rettig held onto the order for a couple of days.

On February 7, 2020, claimant and Rettig cashed the money order. Claimant signed the money order, stating she had purchased it. Rettig signed the money order to cash it. The two split the money.

On February 22, 2020, the customer came back into employer's store with a receipt showing claimant and Rettig cashed his money order. The customer said that he wanted his money back because he needed to pay rent. The customer said that if they returned his money, he would not press charges. Claimant went to the bank and gave the customer his money. No charges were filed.

Employer suspended claimant.

After consultation with human resources, employer terminated claimant's employment on February 24, 2020.

Claimant had never been previously disciplined for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant participated in the theft of money from a customer. Claimant asserts Rettig found the money order in the Wal-Mart parking lot the evening of February 5 or the next day. The administrative law judge finds it more probable that claimant and Rettig found the money order in employer's store, where the customer believed he lost it and where claimant and Rettig were both working. Even if the money order was found in the Wal-Mart parking lot, the result remains the same. Claimant was a manager and conspired with a subordinate employee to steal money. Claimant's actions were in deliberate disregard of employer's interests, regardless of where the money order was found. A manager has the responsibility of setting an example of ethical conduct. Employer established claimant was terminated for misconduct, even without prior warning.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The March 10, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Christine A. Louis
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April 30, 2020
Decision Dated and Mailed

cal/scn