

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**AMIE MARCH**  
Claimant

**APPEAL NO. 11A-UI-13299-WT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KIMBERLY CHRYSLER PLYMOUTH INC**  
Employer

**OC: 09/04/11**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a fact-finding decision dated September 27, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 13, 2012. Claimant participated personally. Employer participated by Jackie Nolan, Hearing Representative for Employers Unity. The employer had two witnesses, Dale Zude, Owner and Carol Power, Controller. Exhibit A (11 pages) was admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant began working for the employer on November 10, 2003. At the time of her separation from employment she was the office manager. Claimant last worked for employer on September 7, 2011. Claimant was discharged on September 7, 2011 by employer because she allegedly violated the employer's policy regarding goodwill refunds.

As the office manager, the claimant was authorized to write checks to pay bills. Her authority was outlined in a memo dated November 22, 2010. By the terms of this memo, she was not allowed to write "goodwill refunds" without the approval of Dale Zude, the owner. The claimant wrote three substantial goodwill checks signed by the claimant in 2010.

**REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 24.32(8) provides:

(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.

871 IAC 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.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning check signing. The claimant asserted, and the employer conceded, that she was allowed to sign checks not specifically delineated in the employer's memo, if she attained prior approval from Mr. Zude. This process was not well-documented by the employer so the evidence is sketchy. The employer conceded that this process existed and the claimant testified credibly, under oath, that she always followed

this policy. The employer was unable to rebut this testimony with anything specific which demonstrated that she did not attain prior approval for the checks which were written in November and December 2010 and January 2011. Moreover, there is no evidence anywhere in this record that the claimant intended to deceive or betray the employer's trust. On the contrary, the record established that Ms. March was a loyal, faithful employee. As such, misconduct has not been established.

**DECISION:**

The fact-finding decision dated September 27, 2011, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Joseph L. Walsh  
Administrative Law Judge

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Decision Dated and Mailed

jlw/css