

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTEN L OSBORN
Claimant

APPEAL 19A-UI-10246-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GIT-N-GO CONVENIENCE STORES INC
Employer

**OC: 11/10/19
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:

On December 23, 2019, the employer filed an appeal from the December 13, 2019, (reference 05) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 21, 2020. Claimant participated. Employer participated through supervisor Jeff English. Employer's Exhibits 1 and 2 were received.

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 any 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 began working for employer in February 2019. Claimant last worked as a full-time assistant manager. Claimant was separated from employment on December 6, 2019, when she was terminated.

Employer has a handbook that states insubordination could be a terminable offense. Claimant was aware of the policy.

On December 3, 2019, supervisor Jeff English faxed store manager, Jessica, two written warnings to present to claimant regarding work performance issues.

Jessica paper clipped the warnings to claimant's paycheck.

On December 5, 2019, claimant picked up her paycheck from work and found the two written warnings. Claimant took the written warnings with her. Claimant folded the written warnings.

Jessica sent claimant a text message stating she needed to return the written warnings and that she would be in trouble if she failed to do so. Claimant returned the written warnings to the workplace, but had not yet signed them. Claimant sent Jessica a message informing her of this. Claimant never stated she would not sign the written warnings and Jessica never told claimant she must sign the written warnings before returning them or she would be terminated.

On December 6, 2019, claimant was scheduled to work at 2:00 p.m. At approximately 1:30 p.m., Jessica sent claimant a text message stating she had been terminated for failing to sign the written warnings.

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 for no disqualifying reason.

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).

As noted in the findings of fact above, employer failed to establish claimant actually refused to sign the written warnings. Employer also failed to establish claimant was aware she could be terminated if she did not sign the warnings before returning them on Thursday evening. It was not unreasonable for claimant to believe she was going to have a meeting with Jessica on Friday when she worked and that she would be given an opportunity to sign the written warnings at that time. Employer failed to establish claimant was terminated for job-related misconduct.

Because claimant's separation from employment is not disqualifying, the issues regarding overpayment of benefits are moot and will not be discussed further in this decision.

DECISION:

The December 13, 2019, (reference 05) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

January 22, 2020
Decision Dated and Mailed

cal/scn