

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBIN DEWALD
Claimant

SAFELITE SOLUTIONS LLC
Employer

APPEAL 22A-UI-01218-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/17/21
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer, Safelite Solutions LLC, filed an appeal from the December 1, 2021, (reference 05) unemployment insurance decision that granted benefits based upon the conclusion the claimant was discharge for non-disqualifying conduct. The parties were properly notified of the hearing. A telephone hearing was held on February 3, 2022. The claimant participated and testified. The employer participated through Contact Center Operations Manager Justine Lange. Official notice was taken of the administrative records. Exhibits 1, 2, 3, 4, and 5 were received into the record.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

Whether the claimant has been overpaid benefits.

Whether the claimant is excused from repaying benefits due to the employer's non-participation at fact-finding.

FINDINGS OF FACT:

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

The claimant, Robin Dewald, began working for the employer full-time as a customer service representative from June 10, 2019, until January 14, 2021, when the employer discharged her. The claimant's immediate supervisor was Job Coach Amy Mettler.

The employer has an employee handbook, which contains its various policies regarding employee behavior. In a section labeled Codes of Conduct, employees are told, "Unprofessional language, written or spoken, and/or profanity are unacceptable in the Contact Center at all times." The employer provided a copy of this page from its employee handbook. (Exhibit 2) The

employer provided a copy of the claimant's acknowledgement of receipt of the policy on June 10, 2019. (Exhibit 1) The employer also has a Quality Standards policy, which asks employees to maintain polite and professional throughout the call. This policy specifically forbids an employee from raising their voice. The claimant acknowledged awareness of these policies.

On February 4, 2020, the employer issued the claimant a final written warning for a call occurring on January 31, 2021. The final written warning states the claimant was "unprofessional by not maintaining a professional tone of voice throughout [the call]." The written warning does not provide any further specific description of this incident. Contact Center Operations Manager Justine Lange did not find any details of the call on the employer's system. Ms. Lange did not have first-hand knowledge of what occurred on the call. The final written warning said if the claimant continued to engage in the behavior she could receive discipline "up to and including immediate dismissal." (Exhibit 5)

On July 24, 2020, the employer issued the claimant a final written warning for a call occurring on July 20, 2020. The final written warning states the claimant was "unprofessional by not maintaining a professional tone of voice throughout [the call]." (Exhibit 4) Ms. Lange found the following additional details on the employer's internal system, "The associate was disruptive with the volume and tone. It disrupted the call center. Not taking the proper steps to take care of the concern."

On January 4, 2021, the claimant received a plan of action to reducing the duration of her calls. The claimant maintains her voice is loud and it gets louder when she gets frustrated. The claimant tended to get frustrated more easily towards the end of her term of employment because she became more aware of the employer's expectation for call duration. As a call went on, the claimant projected her voice inadvertently.

On January 14, 2021, Annette Bohl and Vice President Shannon Slade issued the claimant a termination notice for a call occurring on January 5, 2021. The termination notice alleges the claimant "did not maintain a professional atmosphere throughout [the call]." Ms. Lange stated she was a few desks away from the claimant and could hear the conversation because her voice was raised. Ms. Lange said the claimant used escalated phrases such as, "Let me finish before you interrupt me," and, "Let me see if that is available." Ms. Lange denied hearing the claimant use profanity on the call.

The following section describes the findings of fact necessary to resolve the issue regarding overpayment:

The claimant filed for and received benefits from the week ending January 23, 2021 until the week ending November 26, 2021 for a total of \$8,966.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to non-disqualifying conduct. The overpayment issue is moot because the claimant's conduct was non-disqualifying.

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and 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

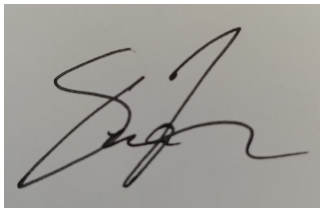
the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The administrative law judge concludes the employer has not met its burden. It provided very vague descriptions of the claimant's behavior on three different calls occurring over a one-year period. The employer concedes the claimant did not use profanity on the calls. To the extent it describes what the claimant said on the calls at all, it described very typical sentences that might come up on a tense customer service call, "Let me finish before you interrupt me," and, "Let me see if that is available." The employer also said the claimant was loud on these calls. The employer has the burden to show the claimant acted with disregard to its interest in performing her duties on these calls.

There is insufficient detail in the employer's report to make a finding the claimant's raised voice on three calls within an approximately 13-month period resulted constituted intentional disqualifying conduct. Benefits are granted.

DECISION:

The December 1, 2021, (reference 05) unemployment insurance decision is affirmed. The claimant was discharged due to non-disqualifying conduct. Benefits are granted, provided the claimant is otherwise eligible. Since the claimant is entitled to benefits, the overpayment issue is moot.



Sean M. Nelson
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February 24, 2022
Decision Dated and Mailed

smn/kmj