

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

DEBRA K TRIMBLE  
1335 MAIN ST  
CENTER POINT IA 52213

PPS FINANCIAL SERVICE INC  
MONEY STATION  
1508 – 1<sup>ST</sup> AVE NE  
CEDAR RAPIDS IA 52402-5124

Appeal Number: 05A-UI-06668-DT  
OC: 10/03/04 R: 03  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.5-1 – Voluntary Leaving  
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Debra K. Trimble (claimant) appealed a representative's June 17, 2005 decision (reference 04) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from PPS Financial Services, Inc., doing business as Money Station (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 14, 2005. The claimant participated in the hearing. Jennifer Ferguson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 21, 2005. She worked full time as a check-cashing agent in the employer's check cashing agency. Her last day of work was June 3, 2005.

During the day on June 3, the claimant discovered that she had made a \$170.00 error in failing to charge a customer for a money order after cashing the customer's check and issuing a money order. This was not the first time the claimant had made this error. The claimant called the general manager to report the error, and he instructed her to try to find out which transaction and which customer was at issue so that remedial action could be taken. After speaking to the general manager, the claimant was upset and spent some time in the restroom. She did come out and went to transaction records to find out where the error had occurred, and did identify the transaction in question. She returned to the restroom for a while, and when she emerged, she got her purse and said something to the effect of "I should probably go ahead and quit, I'm probably going to get fired anyway." She then started to go outside. Ms. Ferguson, the acting on-site manager, told the claimant something to the effect that the claimant should hang on and wait at least until the end of the day and see if something could be worked out. The claimant proceeded out the door with her purse.

The reason the claimant went outside with her purse at that time was to call the off-site general manager again in privacy on her cell phone. She remained on the premises outside the building and called him and reported she had found the transaction in question and identified the customer. The general manager indicated to the claimant that this was not the first error of this kind and "I don't think I can keep you on any longer." The claimant responded that she understood. After the conclusion of the phone call, the claimant decided not to go back into the building, got in her car, and left. She returned the following week to turn in her keys.

The claimant established an unemployment insurance benefit year effective October 3, 2004. She filed an additional claim effective June 5, 2004.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant voluntarily quit.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The

employer asserted that the claimant was not discharged but that she quit by leaving the building stating that she “should probably go ahead and quit.” This does create an inference that the claimant was intending to quit. However, the claimant’s actions immediately after exiting the building and while still on the premises to call the general manager to further discuss the situation effectively rebuts that presumption. Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code section 96.6-2. As the separation was not a voluntary quit, but was at best a choice only to quit or be fired, which must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer’s interest, or
    2. The employee’s duties and obligations to the employer.

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 reason the employer effectively discharged the claimant was her repeated errors in failing to properly charge customers in multi-step transactions. It is apparent that the claimant lacked the necessary abilities to perform the job properly. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. There is no evidence the claimant intentionally failed to properly charge the customer. While the employer had a good business reason for releasing the claimant from employment, the employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code section 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code section 96.19-3. The claimant's base period began July 1, 2003 and ended June 30, 2004. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

#### DECISION:

The representative's June 17, 2005 decision (reference 04) is reversed. The claimant did not voluntarily quit and the employer did effectively discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

ld/kjw