

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KAYLA R FINN**  
Claimant

**BOOKS-A-MILLION INC**  
Employer

**APPEAL 18A-UI-01467-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/31/17  
Claimant: Respondent (1)**

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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:**

Books-A-Million, Inc. (employer) filed an appeal from the January 23, 2018, reference 01, unemployment insurance decision that allowed benefits based upon the determination Kayla R. Finn was not discharged for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on February 26, 2018. The claimant participated. The employer participated through District Manager Edmond Reidy. The Employer's Exhibit 1 was received without objection.

**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 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: The claimant was employed full-time as a Non-Book Lead beginning on September 25, 2017, and was separated from employment on January 5, 2018, when she was discharged. The claimant was a fourth line supervisor in the store. The supervisor immediately above her was Tyler Ruiz, and both reported to Manager Randy Koppes. The employer has an anti-harassment policy and a Code of Conduct that prohibits "[o]ther acts which the company concludes may adversely affect its interests." (Exhibit 1, page 2)

The claimant and a female associate, who reported to her, went to Ruiz's dwelling on Christmas Day. The following day the associate reported to the claimant that Ruiz had touched her inappropriately and against her will. The claimant advised the associate to report the incident to Koppes which she did.

On January 3, 2018, an investigation began into the associate's complaint. During the interviews, the claimant disclosed she had a sexual relationship with Ruiz. Koppes advised her not to talk to anyone about the incidents between the associate and Ruiz. Koppes did not advise her that she could not contact Ruiz. That evening, the claimant contacted Ruiz via private social media to apologize for the incident. She contacted him again the following morning to apologize.

On January 4, 2018, Ruiz was discharged and informed the employer of the messages that the claimant had sent him. The claimant was discharged the following day for harassing Ruiz by sending him messages and violating the Code of Conduct.

The administrative record reflects that claimant has not received unemployment benefits since filing a claim with an effective date of December 31, 2017. The employer contends it did not participate in the fact-finding interview because it did not receive notice.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code section 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 disqualification shall continue 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:

(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(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.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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 the 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).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute 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). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. No request to continue the hearing was made and no written statement of the individual was offered. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

The conduct for which the claimant was discharged was an isolated incident of poor judgment. The employer's witness provided multiple reasons for the claimant's discharged but definitively stated the discharge was not due to her relationship with Ruiz. The claimant was relatively new in her position and did not know that she needed to report the associate's complaints to upper management, but she did encourage the associate to report the incident. Additionally, the employer has not established that Koppes told the claimant she was not to speak with Ruiz during the investigation.

The employer has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning as it had not previously warned the claimant about the issues leading to the separation. An employee is entitled to fair warning that the employer will not tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Benefits are allowed.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

**DECISION:**

The January 23, 2018, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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