

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JAMES G TEGTMEIER-HEDINGER**  
Claimant

**BERTHEL FISHER & COMPANY**  
Employer

**APPEAL 20A-UI-13274-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/05/20  
Claimant: Respondent (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 – Overpayment  
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation  
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

**STATEMENT OF THE CASE:**

Berthel Fisher & Company (employer) appealed a representative's October 20, 2020, decision (reference 03) that concluded James Tegtmeier-Hedinger (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 1, 2020. The claimant participated personally. The employer participated by Kristie Bixler, Human Resources Manager.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, which party should be charged for those benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 20, 2019, as a full-time salaried auditor who was assigned to work from home. He signed for receipt of the employer's handbook. The employer did not issue the claimant any warnings during his employment. The claimant was doing the work of two people and complained to his supervisor about the load. The employer did not provide assistance. The claimant was working the best he could.

The employer assigned the claimant a desktop computer, laptop, cellphone, iPad, and other equipment. On July 9, 2020, the claimant and his supervisor discussed long-term, year-end

goals. The employer expressed concerns about a lack of communication and regular updates. After the discussion, the supervisor and the human resources manager talked about the claimant. They looked at information concerning his logging into his desktop and use of his cellphone. The investigation would not have shown the lion's share of the claimant's work on his laptop. The two decided to terminate the claimant.

On July 10, 2020, the employer terminated the claimant for "not meeting performance expectations or providing details regarding what tasks you have been spending time on" and "logins and activity in multiple systems is significantly below what is expected".

The claimant filed for unemployment insurance benefits with an effective date of July 5, 2020. His weekly benefit amount was determined to be \$512.00. The employer participated personally at the fact finding interview by Kristie Bixler. The claimant received benefits of \$512.00 per week from July 12, 2020, to the week ending July 25, 2020. This is a total of \$1,024.00 in state unemployment insurance benefits after the separation from employment. He also received \$1,200.00 in Federal Pandemic Unemployment Compensation for the two-week period ending July 25, 2020.

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

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:

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

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

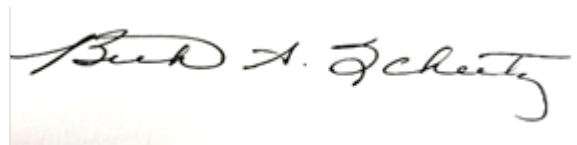
(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling 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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. There was no final incident provided. It did not meet its burden of proof to show misconduct. Benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The representative's October 20, 2020, decision (reference 03) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



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Beth A. Scheetz  
Administrative Law Judge

December 8, 2020  
Decision Dated and Mailed

bas/scn