

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOLENE FLEMING
Claimant

INNOVATIVE AG SERVICES CO
Employer

APPEAL 15A-UI-10182-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/09/15
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the September 1, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on September 24, 2015. Claimant participated. Employer participated through human resources generalist, Craig Schroeder, and location manager, Ben Biver. Employer's Exhibits 1 through 11 were received. Proposed Exhibit 12 was not received as it was information obtained after the separation.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a location customer service representative from March 21, 2011 (Employer's Exhibit 1), and was separated from employment on August 12, 2015, when she was discharged. She had also assisted with truck dispatching until they were permanently added to her job duties in June 2015. The two primary reasons for the separation were a mileage spreadsheet the controller wanted by August 4 but which was submitted on August 10, and a missed bill for a custom application in April 2015, discovered on August 7. (Employer's Exhibit 5)

Ben Biver, claimant's immediate supervisor since December 2014, was on vacation from August 3 through August 7. While he was absent claimant's time record reflects she worked 44.15 hours. (Employer's Exhibit 6) Acting supervisor in Biver's absence was Jim Latwessen. One of claimant's duties is creating a vehicle mileage spreadsheet report from data obtained from a dozen regional offices. That report used to be due on the tenth of the month but was changed to the fourth of the month in April 2015. Controller Patti Schuchmann sent claimant an e-mail on August 7 asking for the report. (Employer's Exhibits 7, 8) Claimant replied she would not have it complete until August 10. Reports for May, June and July 2015, had also been submitted after the fourth of the month because claimant had problems getting the information from the company computer drive she needed for the reports from the regional offices if they

had not yet submitted the data to the drive by the second or third of the month. Biver had instructed claimant to seek his help if the information was not available on the drive when she needed it. She did not ask Latwessen for his help when Biver was gone. When Biver returned on August 10 claimant was still waiting for information from three locations. This had been an ongoing problem throughout her employment. Claimant's previous supervisor Chris Shadden knew of the problem with regional offices reporting information late for her report.

A work order ticket (not provided) from April 25, 2015, showed a custom application of anhydrous in addition to another service. Claimant billed one service but not the custom application chargeable at \$18,027.40. The missing bill was not caught until the week of August 7 during a preparation for the audit at the year-end on August 30. Agronomist Haley Dubberke found the non-billed item. Claimant billed it the same day it was brought to her attention. A work order or sales ticket is created by an agronomist, manager or claimant about what is to be billed and enters that into the computer. A custom applicator also submits a hand-written log of the work completed to Biver, which is filed in a paper file. Claimant does not recall seeing that work order ticket but billed the other item on the work order. She was not aware there was a separate custom application to be billed and no bill was sent for the custom application from the log of applied acres. (Employer's Exhibit 11) She was allowed to bill for chemical products when delivered before the application. The applicator log is what alerts the billing office that the application may be billed. There is no organizational or tickler system linking the two parts of the work order: the chemical product and the custom application, if any.

She had been given a verbal warning about personal phone use on April 15, 2015, and a written warning on May 12, 2015, about job performance decline, noting time spent texting, personal use of the company phone, use of mobile phone on work time, excessively long mail runs, long lunches without permission, and general inattentiveness. (Employer's Exhibit 2) The warning was renewed on May 27. (Employer's Exhibit 3) Biver placed claimant on a performance improvement plan on June 17, 2015, reiterating some of the items from earlier warnings and instructed her to ask for assistance from managers and human resources in a timely manner, and put measures in place to prevent future errors. Her progress was to be reviewed every two weeks through August 31, 2015, and he warned her about possible termination from employment. (Employer's Exhibit 4) Claimant focused on making improvement after a busy spring season without enough assistance.

The employer attributed billing errors to claimant but errors also stemmed from agronomist errors, which could result in a billing adjustment once billed, discovered and corrected. Other reasons for billing errors were attributable to billing cycle timing or late submissions from sales people. (Employer's Exhibit 9) Biver ascribed physical count and computer inventory errors from June to claimant with a net total of \$51,163.26 because \$32,197.34 of product was not billed until July. (Employer's Exhibit 10)

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

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 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. Certainly the employer is justifiably concerned when an employee spends inordinate amounts of time at work on personal matters and is correct that inattentiveness to job duties may cause errors; and just because a former supervisor did not address areas of concern does not mean that it should not have been done. However, there is no substantial evidence that any vague allegations of inattentiveness and personal phone use resulted in carelessness or negligence that would rise to the level of disqualifying misconduct. More specifically, as to the issue of the failure to submit the mileage report by August 4, since there was an ongoing issue of regional offices failing to timely submit their reports so claimant could timely file her report, the failure was not due to claimant's neglect or deliberate conduct. Regarding the failure to bill for the custom application in April, the unsystematic record-keeping of custom applicator hand-written logs and different

timing for chemical product billing invites confusion and missed items, especially when multiple people may pull the paper information and there is no electronic record kept with the work order. Further, a lack of a billing reminder system when the product and the application are recorded separately but may be billed separately or together creates another opportunity for error. Finally, the employer has not attributed all errors directly to claimant as others, including Biver, managers and agronomists, had roles in the process. Even though the claimant may have performed poorly in some areas, since others with some degree of responsibility in the issues, such as regional offices' untimely information submission and agronomists' work order errors, did not result in discipline, the claimant seems to have been the subject of the disparate application of procedural standards, which cannot support a disqualification from benefits.

DECISION:

The September 1, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs

NOTE TO EMPLOYER:

If you wish to change the notification person of record, please access your account at: <https://www.myiowaui.org/UITIPTaxWeb/>.
Helpful information about using this site may be found at:
<http://www.iowaworkforce.org/ui/uiemployers.htm> and
<http://www.youtube.com/watch?v= mpCM8FGQoY>