

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**LAURETTA K HOCKENBERRY**  
Claimant

**DEERY BROTHERS INC**  
Employer

**APPEAL 17A-UI-06841-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/04/17**  
**Claimant: Respondent (1)**

---

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:**

The employer filed an appeal from the June 29, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 24, 2017. Claimant participated. Employer participated through Tyler Lynch and deal processor Taylor Long and was represented by Robin Quon. Megan Milligan observed. Employer's Exhibit 1 was received. At the conclusion of the telephone hearing, the record was held open to allow claimant to review Exhibit 2 and lodge any objections to having it admitted into the record. Claimant sent an email on July 26, 2017, to the administrative law judge and employer's representative Quon stated she had no objections to Exhibit 2 being admitted into the record. Exhibit 2 was received. No other information contained in the July 26, 2017, email was considered as the record in regard to all other substantive issues was closed.

**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: Claimant began working for employer on November 28, 2016. Claimant last worked as a full-time receptionist. Claimant was separated from employment on June 5, 2017, when she was terminated.

Claimant originally worked for employer as a full-time deal processor. As a deal processor, claimant was required to complete funding entries daily and was not allowed to have sales paperwork sit on her desk for more than three days. Claimant did not timely complete the

duties. Claimant received a verbal warning on March 20, 2017, for failing to timely complete her work.

At the end of April 2017, claimant was moved to the position of receptionist and former receptionist Taylor Long was transferred to the position of deal processor. Claimant and Long have a personality conflict.

As a receptionist, claimant was required to answer the phone in a timely manner. If the receptionist phone was not answered within four to six rings, the calls were rerouted to the sales tower. When claimant was moved to the position of receptionist, she was required to work nights and weekends as needed.

When claimant began working as a receptionist at the end of April 2017, Long asked claimant to work on Saturday, May 6, 2017. However, claimant was unable to cover the shift with such short notice. Long reported this to claimant's supervisor, controller Tyler Lynch. Lynch took no action.

Claimant received a very short period of training for the receptionist position from Long. As a result, claimant did not always run reports in a timely manner when she started working as a receptionist. Long was aware of the untimely reports, but did not report the information to Lynch prior to claimant's termination. Instead, Long helped claimant correct the issue.

During May 2017, Long felt claimant was rude to her on two separate occasions. Long reported this to Lynch. However, claimant was not disciplined regarding the incidents.

On Friday, June 2, 2017, the phone at the receptionist desk was not working properly. Claimant was not receiving phones calls. Claimant notified the phone coordinator, Rose, who was working on resolving the issue. Lynch was at the sales tower. During a period of ten minutes, Lynch received three calls at the sales tower that were intended for the receptionist desk. Lynch did not ask claimant if there was a reason she was not answering the phone.

On June 5, 2017, employer terminated claimant's employment.

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

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

Iowa Code § 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 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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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). 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).

In this case, employer terminated claimant for several reasons, none of which amount to misconduct.

Employer did not establish claimant intentionally failed to complete her job duties by ignoring phone calls at the receptionist desk on June 2, 2017. Claimant credibly testified there were issues with the receptionist phone line that day, which she properly reported. Lynch offered very little detail about the occurrence and his investigation of the incident was cursory. Lynch's testimony about this incident was not as credible as claimant's.

Employer did not establish claimant's failure to work on Saturday, May 6, 2017, is an act of misconduct. Employer took no action after learning about the incident and over a month passed before claimant's termination. Any disqualifying act of misconduct must be a current act. Iowa Admin. Code r.871-24.32(8). Even if this was a current act, claimant had never been previously

warned regarding failure to work nights and weekends. Furthermore, given the short notice she received of the requirement to work on May 6, her response was reasonable.

Employer failed to establish it terminated claimant for failing to complete receptionist reports in a timely manner as Lynch, the person who terminated claimant, had no information about this allegation. Long testified she did not inform Lynch of the issue until after claimant had been terminated. Furthermore, there is no evidence claimant intentionally failed to run the reports in a timely manner. Claimant received rushed training for the receptionist position and when Long realized claimant was having issues running the reports, Long helped her correct the situation.

Finally, if claimant was rude to Long two times in May 2017, she had never been previously warned regarding similar conduct. It amounts to isolated incidents of poor judgment in what became a tense work situation for claimant. It does not amount to misconduct.

In summary, claimant had only received one verbal warning prior to her termination. The verbal warning was for failure to complete work in a timely manner. Employer failed to establish it terminated claimant because she intentionally failed to complete work in a timely manner after being warned or for any other action that would amount to misconduct standing on its own. Therefore, the separation is not disqualifying and benefits are allowed.

Because benefits are allowed, any issues regarding overpayment of benefits are moot and will not be discussed further in this decision.

**DECISION:**

The June 29, 2017, (reference 02) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

---

Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

---

Decision Dated and Mailed

cal/scn