

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SHARI D SARTORI
Claimant

APPEAL NO. 16A-UI-05563-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 04/17/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Pilot Travel Centers (employer) appealed a representative's May 10, 2016, decision (reference 01) that concluded Shari Sartori (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 scheduled for June 3, 2016. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Joseph Smith, General Manager, and Karen Stevens, Guest Service Leader Two. The employer offered and Exhibit One was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 April 9, 2014 as a part-time cashier. The claimant signed for receipt of the employer's handbook on April 9, 2014. The employer did not issue the claimant any warnings during her employment. She last performed work on March 7, 2016.

The claimant was in Indiana for a few days. She returned and there was a new general manager. On March 15, 2016, she asked to be placed on the schedule but the new general manager told her no hours were available. The claimant understood the new general manager to say he would not let her work so long as she was homeless. On March 17 and 18, 2016, the claimant was a customer in the employer's Subway. She spoke to her manager and asked about using the manager's address so she could return to work. On March 21, 2016, the employer terminated the claimant for her actions on March 17 and 18, 2016.

The claimant filed for unemployment insurance benefits with an effective date of April 17, 2016. The employer provided written documentation for the fact finding interview on May 9, 2016. The

written documentation did not provide the dates and particular circumstances of the incidents for which the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). Off premises during lunch hour, claimant assaulted co-worker for alleged rumors spread by co-worker. Court of Appeals

allowed benefits, noting lack of evidence of negative impact at work place plus fact that claimant finished the day before being discharged. Diggs v. Employment Appeal Board, 478 N.W.2d 432 (Iowa App. 1991). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct that was work related. The claimant was a customer speaking to a manager. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's May 10, 2016, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs