

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SHANNON M SHEPHERD**  
Claimant

**CASEY'S MARKETING COMPANY**  
Employer

**APPEAL 17A-UI-09555-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/27/17  
Claimant: APPELLANT (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 13, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 10, 2017. Claimant participated. Employer participated through Nancy Nourse, Area Supervisor. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged for job connected misconduct sufficient to disqualify her from receipt of unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a store manager beginning with a franchise on December 31, 1991, and then when the company bought back all of the franchise stores, she began with them as a store manager on June 21, 2001 through August 28, 2017, when she was discharged. Claimant had worked as a store manager for over twenty-five years.

The claimant was discharged for falsification of information in a subordinate employees ADP account. The claimant had been given a copy of the employer's policies she was expected to follow. Each year managers are to train or retrain all of their employees on the employer's code of conduct policy. After the employees are trained, they are required to log into their own ADP account and electronically sign off that they have completed the training. Each manager is given a deadline by which they must have all of their employees trained. On August 24, the claimant had all of her employees trained and their signatures recorded but one, Jackie, who was in the hospital. The claimant had access to Jackie's ADP password so without asking permission of the area supervisor, she logged into Jackie's ADP account and electronically signed Jackie's name indicating that she had been trained on the employer's code of conduct. The claimant planned to individually train Jackie when she was released from the hospital and returned to work.

Later when the claimant was discussing the completed training with Ms. Nourse, Ms. Nourse asked her how it was possible that Jackie had completed the training when she was in the hospital. It was then that the claimant told Ms. Nourse she had gone into Jackie's account and signed Jackie's name. The claimant knew when she signed Jackie's name that Jackie had not completed the training. Jackie did not give the claimant permission to access her account and even if she did, Jackie did not have the authority to allow the claimant to violate one of the employer's rules or policies. When Ms. Nourse learned what the claimant had done, she made arrangements with ADP to reset Jackie's account so it would show she had not completed the training and she reported what the claimant had done to the human resources department. The human resources department had the claimant fill out a statement about what had occurred. Based on Ms. Nourse's conclusion that she could no longer trust the claimant as a store manager to follow policies and procedures, the claimant was discharged. The claimant had no prior discipline.

### **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 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).

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). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. There is no real dispute that the claimant forged an employee's name without permission on the employees ADP account. The claimant did so in a misguided attempt to meet the training deadline. The conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Under these circumstances, while the employer may have good cause to discharge, they simply have not established sufficient job connected misconduct to deny unemployment insurance benefits. Benefits are allowed.

**DECISION:**

The September 13, 2017, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/scn