

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER L ASHCRAFT
Claimant

TRI-STATE NURSING ENTERPRISES INC
Employer

APPEAL 17A-UI-06647-NM-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/11/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 28, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for theft of company property. The parties were properly notified of the hearing. A telephone hearing was held on July 18, 2017. The claimant participated and testified. The employer participated through Accounting Manager Jennifer Schneiders.

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 staffing coordinator from February 9, 2016, until this employment ended on June 9, 2017, when she was discharged.

On June 9, 2017, it was discovered that claimant had placed two pieces of mail in the employer's mail basket without postage. The employer utilizes a service that picks up and processes its mail daily. Employees are allowed to place their personal mail with the employer's mail, but letters are either required to have proper postage or they are supposed to first pay the accounting department for postage. This is an informal policy and no payment records are kept.

Claimant testified that the week prior she had given the accounting department one dollar for postage. After she had paid her money claimant looked at the two pieces of mail she was sending and realized they were in envelopes where the postage had already been paid. Claimant knew she would be mailing some things again soon, so rather than ask for her dollar back, she decided she would just use that money to pay for her next two letters. Claimant did not speak to the accounting department about this, but assumed it would not be an issue. Claimant was subsequently terminated for theft of company property when the two letters were discovered on June 9. Claimant attempted to explain the situation to her supervisor at the time of her termination, but was unsuccessful. Schneiders testified employees are not usually

allowed to carry over a balance on postage and she would have expected claimant to speak with her about the situation, but admitted there was no policy or procedure directing her to do so. Schneiders also testified they could not be certain that claimant's conduct was deliberate, rather than a mistake. Claimant had no prior disciplinary action for any similar incidents.

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:

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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *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). 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).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Here, claimant was discharged after she placed two pieces of mail without postage in the employer's mail bin. Claimant provided credible testimony that she believed she had properly paid the employer for postage the week before when she did not end up using postage she had paid for. Claimant should have spoken to someone about the unused postage at the time, but her failure to do so was merely an isolated incident of poor judgment and was not in violation of any policy or procedure. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016).

The employer has failed to show claimant engaged in theft or other deliberate misconduct. At best, ordinary negligence is all that is proven here, though it appears more likely to be a case of a simple misunderstanding. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue 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.

DECISION:

The June 28, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs