

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TELISHA N RUDD
Claimant

APPEAL 20A-UI-06161-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 04/05/20
Claimant: Respondent (3)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.3-7 – Overpayment
Iowa Code § 96.5-2-a – Discharge/Misconduct
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated June 8, 2020 (reference 01) that determined the claimant was able and available for work. The claimant participated in the hearing with Attorney Devin Kelly. Bill Hook, General Manager, participated in the hearing on behalf of the employer. The parties waived notice on the separation issues.

ISSUES:

The issues are whether the claimant is eligible for total or partial unemployment benefits, whether the claimant still employed at the same hours and wages, whether the claimant is able and available for work, whether the employer's account is subject to charge, whether the claimant is overpaid benefits, whether the claimant was discharged for misconduct, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

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 as a part-time cashier for Pilot Travel Centers on May 30, 2018, and was discharged from her position May 2, 2020.

The claimant was averaging 40 hours per week but was still considered a part-time employee through her separation date. She was working on a reduced work week from before the time she filed her claim for benefits effective April 5, 2020. The parties could not provide a week by week breakdown of the claimant's hours. The claimant reported her hours worked when making her weekly claim for benefits and received \$131.00 the week ending May 2, 2020.

On April 28, 2020, the claimant arrived for work and began her morning routine. She was making coffee when a new assistant manager told her to fill the island immediately and the

claimant replied she was making coffee and would then do the island. The assistant manager told her to do it right away and the claimant said she would do it after she finished the coffee. The assistant manager reported the conversation to General Manager Bill Hook and two hours later the assistant manager, Mr. Hook and the claimant met and Mr. Hook asked the claimant why the island was not done. The claimant stated it was done and Mr. Hook told her when the assistant manager tells her to do something it is the same as if Mr. Hook directed her to do a task and she needed to do it right away. He told her "She's a manager. She's your boss." The claimant said, "Yes sir," and a customer approached so the meeting broke up. As the claimant started walking away Mr. Hook grabbed her shoulder and the claimant told him not to grab her. The claimant stated she wanted to leave. She was upset because Mr. Hook had never spoken to her in that manner previously. The claimant asked Mr. Hook if she could leave and he said, "Why? Is the job too much for you?" The claimant said no and explained he never talked to her like that before and that he put his hands on her. The claimant filled the island and then told another employee she was leaving. Later that day the corporate office called the claimant and scheduled a meeting with her April 29, 2020. The employer told the claimant not to report for work April 30, 2020. On May 1, 2020, the employer told the claimant not to come onto the premises and on May 2, 2020, it sent the claimant an email stating it was terminating her employment for excessive phone usage. The claimant never received a warning about her use of the phone. On May 4, 2020, the claimant received a letter from the corporate office which said the claimant's employment was terminated due to COVID-19.

The claimant filed for unemployment insurance benefits with an effective date of April 5, 2020. Her weekly benefit amount was determined to be \$220.00. The claimant has received benefits in the amount of \$1,102.00 for the five weeks ending May 30, 2020. She also received \$3,000.00 in Federal Pandemic Unemployment Compensation for the five weeks ending June 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was still employed at the same hours and wages as contemplated in the original contract of hire from the effective date of her claim (April 5, 2020) through the week ending May 2, 2020, but is eligible for benefits for being discharged for no disqualifying reason effective the week ending May 9, 2020.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired as a part-time cashier. Because she was a part-time employee, she was not guaranteed a certain number of hours. While her hours were reduced from what she usually worked, because she was a part-time employee she is not eligible for partial benefits through the week ending May 2, 2020. The claimant's reported wages for the three weeks ending April 25, 2020, were greater than her weekly benefit amount of \$220.00 each week and she did not receive any benefits until the one week ending May 2, 2020, when she reported wages in the amount of \$144.00 and received \$131.00 in unemployment benefits. The claimant is disqualified from receiving benefits based on a reduction of hours in her part-time employment through the week ending May 2, 2020.

The next issue is whether the claimant's discharge was disqualifying. For the reasons that follow, the administrative law judge concludes the 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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant had a morning routine at work, she still had a responsibility to perform her tasks as directed by the assistant manager. When the assistant manager reported the claimant's failure to do as told to Mr. Hook he spoke to the claimant harshly and grabbed her shoulder as she was walking away. Mr. Hook's actions upset the claimant because he had never spoken to her in that manner or placed his hands on her before and she told him she wanted to leave for the day. He did not tell her she could not leave. The corporate office took over the situation at that point and told the claimant not to come in April 30 and told her not to enter the premises May 1, 2020. It then sent her an email May 2, 2020, stating her employment was terminated for excessive phone usage, for which the claimant had never been warned. The email was followed by a letter May 4, 2020, saying the claimant was discharged due to COVID 19.

The employer did not provide any evidence that the claimant used the telephone excessively or that her termination was related to COVID-19. The issue that precipitated the claimant's discharge was the situation involving the claimant and the assistant manager and eventually Mr. Hook. The claimant's actions in not immediately doing as the assistant manager told her April 28, 2020, was an isolated incident of misconduct and as such does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed effective the week ending May 9, 2020.

The final issue is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3(7)a-b, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

- a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

The claimant received unemployment insurance benefits for the five weeks ending May 30, 2020. She was not eligible for benefits the one week ending May 2, 2020, when she received partial benefits while she was still working for the employer. She is eligible for benefits beginning effective the week ending May 9, 2020.

DECISION:

The June 8, 2020. (reference 01) unemployment insurance decision is modified in favor of the respondent. The claimant was still employed at the same hours and wages for the four weeks ending May 2, 2020, and is not eligible for benefits for those four weeks. Consequently, she is overpaid benefits in the amount of \$131.00 for the one week ending May 2, 2020. She was discharged for no disqualifying reason May 2, 2020. Therefore, she is eligible for benefits effective the week ending May 9, 2020.



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July 27, 2020
Decision Dated and Mailed

je/scn