

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIO A FLORES
Claimant

APPEAL 21A-UI-18203-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOBILY LLC
Employer

OC: 08/09/20
Claimant: Appellant (2R)

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

On August 17, 2021, the employer/appellant filed an appeal from the August 10, 2021, (reference 06) unemployment insurance decision that allowed benefits based on claimant being dismissed from work but there was no willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on October 8, 2021. Claimant did not register a phone number to participate during the hearing. Employer participated through Human Resource Manager, Prashant Upponi. Chris Ergenbright was present but was not called as a witness. Exhibits 1, 2, 3, and 4 were admitted into the record. Administrative notice was taken of the claimant's unemployment insurance benefits records.

ISSUES:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Should claimant repay benefits?

Should the employer be charged due to employer participation in fact finding?

Is the claimant overpaid benefits?

Is the claimant eligible for FPUC?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 27, 2020. Claimant last worked as a full-time manager in training. The employer is a mobile phone retail store. Claimant was separated from employment on April 30, 2021, when he was terminated.

On April 30, 2021, claimant was confronted by the employer's loss prevention. From April 2, 2021-April 12, 2021, claimant was accused of taking nine phones and discounting them to \$0. The claimant was accused of then taking the phones and selling them. During the interview claimant admitted that he discounted the phones and sold them.

The employer has a disciplinary policy that states:

"8.1. Grounds for Disciplinary Action. The following actions are unacceptable and may be considered grounds for termination without any prior disciplinary process...". The policy lists stealing as one of the grounds for termination. The claimant was aware of the policy when he was on boarded with the employer on September 3, 2021. The employer terminated the employer for theft of the company's property.

The employer pressed criminal charges against the claimant. The issue of gross misconduct has not been determined.

The claimant did receive benefits after April 30, 2021. Claimant stopped filing for unemployment benefits on January 2, 2021. Claimant did not receive FPUC benefits after September 23, 2020.

WAGE-A reports that claimant received compensation from employers for the following quarters" 3/2020= \$846.00; 4/2020= \$7,037.00; 1/2020= \$7,297.00. The employer testified that claimant began working for the employer on August 27, 2020, but the claimant continued filing unemployment claims until January 2, 2021. (KCCO).

The employer did not participate in fact-finding.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Administrative Code rule 871-24.32(1)a provides:

"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 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). 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).

Discounting phones to \$0.00 and then taking them and selling them to people is theft from the employer. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. In this case, the claimant deliberately disregarded the employer's interest and knowingly violated a company policy. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied. The employer's account should not be charged for this separation since claimant is disqualified from benefits.

Next the issue of whether claimant qualifies for Federal Pandemic Unemployment Compensation (FPUC) must be determined.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

The FPUC program was extended and the weekly benefit amount was reduced to \$300.00 by the consolidated Appropriations Act, 2021.

Claimant does not qualify for regular unemployment benefits so he is not eligible for FPUC benefits based on his regular unemployment claim. Claimant has not received FPUC benefits so the issue of overpayment is moot.

The issue of whether claimant was overpaid benefits as a result of this separation is moot because the claimant did not receive benefits after January 2, 2021.

DECISION:

The August 10, 2021, reference 06, unemployment insurance decision is REVERSED. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

Claimant does not qualify for regular unemployment benefits so he is not eligible for FPUC benefits based on his regular unemployment claim. Claimant has not received FPUC benefits so the issue of overpayment is moot.

Since the claimant has not received regular unemployment benefits the issue of whether he has been overpaid benefits is moot.

REMAND:

The issue of gross misconduct as set forth in the findings of fact is remanded to the benefits bureau for an initial investigation and determination.

The issue of whether claimant properly reported his wages on his weekly unemployment claims as set forth in the findings of fact is remanded to the fraud and integrity bureau for an investigation and initial determination.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

October 13, 2021
Decision Dated and Mailed

cs/mh

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.