

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN H MCFADDEN
Claimant

MIDWEST PROFESSIONAL STAFFING LLC
Employer

APPEAL NO. 14A-UI-04736-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/08/13
Claimant: Respondent (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 5, 2014, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 29, 2014. Claimant participated personally. Employer participated by Crystal VanderWerf. Employer's Exhibits A-D were admitted into evidence.

ISSUES:

Was claimant discharged for misconduct?

Was claimant overpaid benefits?

Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 10, 2014. Employer placed claimant with Met Life where he was trained for two weeks before starting as a customer service representative. Employer discharged claimant on April 10, 2014 because claimant hung up on a broker who had called in for service. Claimant's explanation that he tried to put the client on mute and accidentally hung up on him was not credible.

Employer offered no specifics as to the Met Life customer service training that claimant experienced, but stated with certainty that they would not allow a customer service representative to hang up on a client. Claimant's statement as to the finish of the call differed from employer's. Whereas employer said that claimant said "goodbye" and then hung up, claimant stated he said, "Have a good day", and then tried to mute the conversation. Claimant said he didn't remember having anything in training about not hanging up on customers – even though common sense leads one to believe that this is not an appropriate way to handle a phone customer. Claimant did say that, "basically I was ending the call" when he was

supposedly trying to put the caller on mute and accidentally hung up. This shows the intent of the claimant to not deal with the customer.

Employer in this matter did participate in fact finding. Claimant in this matter received one week of unemployment wages since the date of job separation in the amount of \$320.00.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of

misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Code § 96.3-7 provides in pertinent part:

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.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. . . .

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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct.

In this matter, the evidence establishes that claimant was discharged for an act of misconduct when claimant hung up on a caller. When he said he was ending the call, claimant showed that his hanging up was not a mere accident. Claimant was warned during training that this type of action was zero tolerance. This type of policy is appropriate in a business that relies on customer service to be the voice of the company.

The last incident, which brought about the discharge, constitutes misconduct because it is an action directly in contradiction to claimant's employment. As claimant was hired for customer service, the act of hanging up on a customer is essentially refusing to give service. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

As employer appropriately dismissed claimant for an act of misconduct, claimant has been overpaid unemployment insurance. Claimant has received \$320.00 in gross wages since the date of separation. This amount is recoverable, and employer shall not be charged.

DECISION:

The decision of the representative dated May 5, 2014, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Additionally, as claimant has received an overpayment in the amount of \$320.00, said overpayment shall be recovered by department and employer shall not be charged.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs