

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EBONI JOHNSON

Claimant

APPEAL 19A-UI-07450-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES LLC

Employer

OC: 08/11/19

Claimant: Respondent (1)

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

Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Focus Services (employer) appealed a representative's September 11, 2019 decision (reference 02) that concluded Eboni Johnson (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 14, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Naomi Strange, Human Resources Generalist.

The employer offered and Exhibit 1 was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 on October 29, 2018, as a full-time call center agent. She signed for receipt of the employer's handbook on October 29, 2019. The employer kept a computer log of issues it had with the claimant's performance. No written warnings were listed. The log notations do not indicate that any written warning were issued. If written warnings were issued to the claimant, no copies were kept by the employer.

The claimant left work for maternity leave on or about July 1, 2019. On August 2, 2019, the client told the employer it overheard the claimant in a call with a customer on an unknown date. The claimant did not attempt to save a customer who called to cancel. The employer did not hear the call.

On August 2, 2019, a supervisor called the claimant, while she was still on medical leave, at the request of the client. The supervisor told the claimant she did not have any issues with disconnections for two weeks. In the same conversation, she told the claimant she had six

disconnections. The claimant knew there were issues with the employer's system. If a worker places a disconnect order and the system goes down before the order is processed, the order does not go through. The employer terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of August 11, 2019. The employer participated personally at the fact finding interview on September 10, 2019, by Rachel/Receptionist. She did not have knowledge of the events leading to the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

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.

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 employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of the final incident of misconduct. It did not know the date or the particulars of the incident. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The representative's September 11, 2019, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided she is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs