

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA MORRIS
Claimant

APPEAL 20A-UI-07212-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NW CELLULAR CORPORATION
Employer

OC: 03/22/20
Claimant: Appellant (2)

Iowa Code section 96.5(2)(a) – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(1)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Amanda Morris appealed the June 25, 2020 (reference 02) unemployment insurance decision that denied benefits. The agency properly notified the parties of the hearing. The undersigned presided over a telephone hearing on August 4, 2020. Morris participated personally and testified. NW Cellular Corporation (NW Cellular) participated through human resources director, Misti Houck.

ISSUE:

Was Morris's separation from employment with NW Cellular a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

Did NW Cellular discharge Morris for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

NW Cellular hired Morris on July 30, 2018. She worked full time as a store manager in Marshalltown, Iowa. Richard Oyama was her immediate supervisor. NW Cellular discharged Morris on March 23, 2020.

Employees at the Marshalltown store were failing to correctly ring up sim cards. This was leading to losses for NW Cellular. As a result, Morris moved the sim cards within the store. After doing so, Morris could not find where she had placed them.

In January of 2020, Morris notified Oyama that she had misplaced the sim cards. Oyama told her to find them before the next inventory, which was scheduled for mid-January. Morris failed to find the misplaced sim cards. She informed Oyama of her inability to find them.

Oyama placed a job posting on Indeed for a store manager. Morris saw it and questioned Oyama about it. Oyama explained that he was trying to get people to apply to work for NW Cellular who were bilingual. Oyama scheduled five interviews but no one showed up.

Morris asked if her job was in jeopardy. Oyama told Morris he would tell her if her job was in jeopardy so she could address any issues. Oyama ultimately hired a new store manager for the Marshalltown location to replace Morris. But Oyama did not discharge Morris upon hiring the new store manager.

On March 19, 2020, Oyama called Morris and offered her the opportunity to change jobs. The proposed job change would mean going from a salaried position to a position paid hourly, a reduction in pay, no guaranteed hours, and commuting to stores in Waterloo and Des Moines to cover staffing shortages. Morris would not be paid for the roughly two-hour roundtrip commute from Marshalltown to Waterloo and Des Moines. Morris refused the proposed job change.

On March 23, 2020, Morris went to work. Oyama presented her with write-ups for alleged misconduct. NW Cellular discharged Morris for allegedly removing products from the store and for insubordination based on the missing sim cards from January.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes NW Cellular discharged Morris from employment for no disqualifying reason.

Under Iowa Code section 96.5(2)(a), an individual is disqualified for benefits if the employer discharges the individual for misconduct in connection with the individual's employment. The statute does not define "misconduct." But Iowa Administrative Code rule 871-24.32(1)(a) does:

"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.

The Iowa Supreme Court has ruled this definition accurately reflects 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).

NW Cellular failed to meet its burden to prove Morris committed job-related misconduct. There is an insufficient basis in the evidence from which to conclude Morris removed the sim cards from the store in violation of company policy. The evidence is also insufficient from which to conclude Morris intentionally failed to follow Oyama’s directive by not finding the sim cards. Rather, the evidence establishes it is more likely than not Morris misplaced the sim cards within the store.

Further, even if Morris did remove the sim cards from the store and refuse to return them in violation of Oyama’s directive, her discharge was not until several weeks after she committed the acts in violation of NW Cellular policy. Iowa Administrative Code rule 871-24.32(8) states:

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.

Thus, even assuming for the sake of argument that Morris removed the sim cards from the store and refused to return them, those acts would not constitute current acts under rule 871- 24.32 and would therefore not be disqualifying.

The evidence establishes NW Cellular discharged Morris for non-disqualifying reasons. Morris is therefore entitled to benefits provided she is otherwise eligible under the law.

DECISION:

The June 25, 2020 (reference 02) unemployment insurance decision is reversed. NW Cellular discharged Morris from employment for no disqualifying reason. Benefits are allowed, provided Morris is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Ben Humphrey
Administrative Law Judge

August 10, 2020
Decision Dated and Mailed

bh/sam