

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

Z A HAGERT
Claimant

YORK INVESTMENTS LLP
Employer

APPEAL 20A-UI-03806-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On May 7, 2020, the employer filed an appeal from the April 27, 2020, (reference 01) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 27, 2020. Claimant did not register for the hearing and did not participate. Employer participated through owner Brandon Hartman and was represented by attorney Abigail Wallace. Employer's Exhibits A through C were admitted into the record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 15, 2018. Claimant last worked as a full-time property manager. Claimant was separated from employment on September 13, 2019, when he was terminated.

Employer owns and operates rental properties. Employer has a policy stating that only owner Brandon Hartman or corporate manager, Stephanie, can approve credits on rental obligations. Employer has a policy that warns employer routinely monitors use of company-supplied technology. Claimant was aware of the policies.

Employer ran a special that authorized a \$500 credit if a tenant renewed their lease during January 2019. The terms of the offer were clear, but claimant was also giving credits to tenants

who did not renew their lease during that time period. Claimant did not have authorization from owner Brandon Hartman or corporate manager Stephanie to do so and they were unaware of his practice.

In August 2019, tenants were complaining about billing issues. Hartman and Stephanie looked into the issue and noticed that many tenants living in the property claimant managed were getting credits on their accounts in the months of May, June, and July. Hartman noted about 15 credits each in the amount of \$400 that he did not authorize. Claimant was the only person who would have had access to give the credits. Employer began asking claimant questions about the credits.

After being questioned, claimant began using his work computer and work time to search for new jobs. Employer was monitoring claimant's computer usage and was aware of his conduct. Employer also found a January 2019 email in which claimant agreed to give an unwarranted lease credit and asked the tenant to keep the arrangement "hush hush."

On approximately September 13, 2019, Hartman and Stephanie drove down to Iowa to meeting with claimant. They confronted claimant with evidence of the credits given to the tenants. Claimant denied engaging in the conduct, but could not explain how the credits occurred. Employer terminated his employment.

Claimant has not filed any weekly claims for unemployment insurance benefits since filing a claim with an initial date of March 15, 2020.

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.

Iowa Code § 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 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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant gave unauthorized credits for rent to tenants without employer's approval. Even though claimant denied engaging in the conduct, his search for new work after being asked about the credits, email admitting to engaging in the conduct, and lack of an explanation of how the credits could have otherwise occurred all point to a finding that claimant did in fact give the credits and knew it was wrong to do so. Claimant's conduct was in deliberate disregard of employer's interests and amounts to misconduct, even without prior warning.

Claimant is disqualified from receiving unemployment insurance benefits based on this separation from employment. Claimant has not received any unemployment insurance benefits since filing this claim. Therefore, the issues regarding overpayment of benefits are moot and will not be discussed further. Claimant is not eligible to receive Federal Pandemic Unemployment Compensation at this time as he is not eligible for regular unemployment insurance benefits. See Public Law 116-136, Sec. 2104(b).

DECISION:

The April 27, 2020, (reference 01) 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.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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May 29, 2020
Decision Dated and Mailed

cal/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.