

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**LINDA RAHM**  
Claimant

**APPEAL NO: 12A-UI-02207-B**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MASON CITY FORD LINCOLN MERCURY**  
Employer

**OC: 01/01/12**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Mason City Ford Lincoln Mercury (employer) appealed an unemployment insurance decision dated February 23, 2012, reference 01, which held that Linda Rahm (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa on May 10, 2012. The claimant participated in the hearing with Attorney David Laudner, The claimant's husband, Mark Rahm, was in attendance but did not participate. The employer participated through Ron Lafrenz, Controller; Tami Saidat, Systems Administrator/Human Resources; and Attorney Richard Piscopo. Employer's Exhibit One and Claimant's Exhibits A through C were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant began employment with Don Lafrenz Ford, Lincoln Mercury on January 7, 1985 as a cashier and she was promoted to a co-office manager. Jim Skarliss purchased the business effective May 1, 2007 and incorporated under the name of Mason City Ford Lincoln Mercury. Mr. Skarliss also owns Community Auto Group which includes Community West Side and Community Chrysler Nissan located in Mason City; Community Honda and Community Motors Chevrolet and Cadillac in Cedar Falls; and Community Auto Group in Waterloo.

In November 2001, the employer received a tip from the county treasurer's office regarding potential illegal activity within its company. The employer's internal investigation confirmed evidence of criminal activity and the employer eventually contacted the Mason City Police Department. On December 20, 2011, the employer searched its computer system for

suspicious entries and found numerous price adjustments on used cars that the claimant had completed on December 12, 2011. She had adjusted the price on 27 used cars and these adjustments were found in Journal Source 34. There was no paper documentation or any explanation that could be found as to why these price adjustments were made. It is the responsibility of Controller Ron Lafrenz to enter vehicle price adjustments into the computer system. Mr. Lafrenz is the claimant's direct supervisor and he never asked or directed her to make any price adjustments. In fact, the employer and Mr. Lafrenz were unaware of the claimant's activities until the criminal investigation uncovered her involvement.

Each used vehicle that the employer purchases or accepts on trade is given a unique control number to identify it. Any changes to a vehicle's price can be tracked based on the control number. A vehicle's price can be adjusted if repair work was completed on it but all repair orders are computer generated. Mr. Lafrenz inputs the price adjustment into the computer in Source Journal 80 but the adjustment is only done when based on supporting documentation, which is attached to the report and maintained in a file. If a service or a parts order is not created in the computer, then an invoice must be hand written and hand written invoices are entered into the computer under Journal 34. However, the invoice and supporting documentation are attached to the file.

Very few employees have access to these computer files and that is a safety measure that was put into place. The claimant, Mr. Lafrenz and Systems Administrator Tami Saidat were part of the select group who could view these files and the employees' names and passwords must first be entered before they can access the files. No other employee has access to an employee's password unless that employee would tell them what it is. Neither the car sales manager nor the salesmen have access to these restricted files.

The employer had sufficient evidence to discharge the claimant and eight other employees on December 22, 2011. Three of the discharged employees were subsequently arrested and charged with multiple counts of theft, forgery and fraud resulting from criminal conduct while working for the employer. The employees that were arrested are Sales Manager Tim Behm, his brother Scott Behm and his father John Behm, who were both salesmen. The criminal cases have not yet been resolved. The claimant signed a proffer agreement in January 2012 and is cooperating with the Mason City Police Department.

At the hearing, the claimant testified that she made these price adjustments at Tim Behm's directives. She and Mr. Behm have a long-standing friendship and while Ms. Saidat testified that most people did not want to cross Mr. Behm because they were afraid of him and the power he wielded, the claimant confirmed that she was not afraid of him. Throughout the hearing, the claimant repeatedly reiterated that she did not know she was doing anything wrong because, "I'm not an accountant". She admitted she had never made any price adjustments for the controller or anyone else. She admitted she made other price adjustments for Mr. Behm and never told her supervisor about this. She never asked her supervisor why Mr. Behm did not ask the controller to make these adjustments, since it was his job to do that. The claimant never stated whether she asked Mr. Behm why he was asking her to do that instead of going through the proper channels.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code section 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.

871 IAC 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 discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the

absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The claimant was discharged on December 22, 2011 for using her position to make fraudulent price adjustments to 27 used cars. She did this even though that was her supervisor's job duty, she did this without any supporting documentation, and she did this without her supervisor's knowledge or permission. The claimant contends that she did not know she was doing anything wrong because she is not an accountant but her contention lacks merit. She knew this was not her job duty and she knew that her supervisor did not direct her to do this. The claimant testified she did this at the request of sales manager Tim Behm, who is currently facing felony charges for his illegal activities with the employer. She was given access to the computer files because she was trusted and those security measures were put into place for a purpose. The claimant contends she did this for her friend, and even if, she did not know what she was doing was wrong, a reasonable person would have questioned why she was being asked to do it, if that truly were the case. Tim Behm did not change the prices himself because the employer had safety measures in place to prevent illegal activity.

One of the employer witnesses testified that, "She worked there long enough to know the process" and that is an uncontroverted fact. The claimant's fraudulent activity shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated February 23, 2012, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs