

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY K BAILEY
Claimant

APPEAL 19A-UI-08872-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PYLE TRANSPORTATION INC
Employer

OC: 10/13/19
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the October 29, 2019 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon her discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on December 5, 2019. The claimant, Kimberly K. Bailey, participated personally. The employer, Pyle Transportation, participated through witness Michele Kolpin. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time beginning in April of 2015 as an over-the-road truck driver. She then transferred to auditing driver's logs in October of 2018. She worked from home as a full-time employee for this employer. Claimant's direct supervisors were Michele Kolpin and Bryan Pyle. Her employment ended on October 2, 2019 when she was discharged from employment.

Claimant's job duties involved using the computer to access the employee drive logs. On October 2, 2019, claimant's husband texted the employer that he was quitting his employment. That same day, the employer locked the claimant out of the computer system and she was unable to complete her job tasks online. She was told by Ms. Kolpin that she was considered to have quit because her husband quit. She was told by Mr. Pyle that she was still an employee. Claimant had no discipline during the course of her employment. Claimant had no intention to quit her employment.

Claimant has received \$1,340.00 in gross unemployment insurance benefits since filing her claim with an effective date of October 13, 2019. Ms. Kolpin participated by telephone in the fact-finding interview by providing information to the interviewer that the claimant quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

The administrative law judge finds that the Claimant did not quit. Claimant was discharged from employment.

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(4) provides:

(4) Report required. The claimant's statement and 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.

The employer has the burden of proof in establishing disqualifying job-related 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *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 does not constitute 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).

The employer has failed to establish that the claimant voluntarily quit and failed to establish any incident of disqualifying job-related misconduct. As such, benefits are allowed, provided the claimant is otherwise eligible. Because benefits are allowed, the issue of overpayment is moot. The employer's account may be charged for benefits paid.

DECISION:

The October 29, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn