

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINA R WRIGHT
Claimant

ORSCHELN FARM & HOME LLC
Employer

APPEAL 17A-UI-12233-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/29/17
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 filed an appeal from the November 22, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer failed to establish the discharge was for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephone hearing was held on December 18, 2017. The claimant, Christina R. Wright, participated and witness Laura Warren also testified on claimant's behalf. The employer, Orscheln Farm & Home, L.L.C., participated through Shad Manning, Assistant Manager; and Betty McNabb, Support Manager.

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?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as a cashier, from July 16, 2014, until October 27, 2017, when she was discharged. Around 10:00 a.m. on October 27, claimant told Manning there was poultry water on a display that was mismarked. Manning described claimant's tone as "scolding." When she told him about this issue, he went back to the display and changed the signage to reflect the proper price. Later in the day, Manning overheard claimant having a conversation with a customer. The customer asked claimant who had hired another employee. Manning believes this was an inappropriate conversation for claimant to be having, as it discussed one of her co-workers. Manning discussed claimant's conduct with his district manager, and they concluded she should be discharged. Claimant had been warned in the past for inappropriate behavior toward a customer. This occurred during the summer of 2017. At the time, claimant was told that she would be discharged if there were any similar incidents.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,148.00, since filing a claim with an effective date of October 29, 2017, for the seven weeks ending December 16, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if

the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The administrative law judge does not believe that claimant's warning from the summer of 2017 put her on adequate notice that her behavior in October was inappropriate or would lead to her discharge. Claimant had no documented warnings, and she was not aware she could lose her job for her conduct on October 27. The employer has not established that claimant was discharged for disqualifying, job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible. As claimant's separation is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The November 22, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn