

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CAROL J HOUSTON
Claimant

DOLLAR TREE STORES INC
Employer

APPEAL NO. 20A-UI-06659-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (2R)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 15, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 27, 2020. Claimant participated personally. Employer participated by Alisha Thomson.

ISSUES:

Whether claimant was discharged for misconduct?

Whether claimant has been overpaid state unemployment benefits?

Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was a part time cashier and stocker for employer. Claimant last worked for employer on March 20, 2020. Claimant went to her doctor on March 18, 2020 and her doctor determined that it was not appropriate for claimant to continue working as she was in a high risk category to be greatly affected should she contract Covid.

Claimant and employer agreed that claimant would be allowed go on a leave of absence on or around March 25, 2020. After that leave was granted, claimant tried to come back and work one day, but her doctor reiterated that she should not work during the Covid outbreak.

Employer discharged claimant in late April, 2020 because employer did not wish to keep claimant on the employment books for an extended period of time.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 disqualification shall continue 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).

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work

a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning being on an extended leave of absence. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant committed no act that could be considered misconduct. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

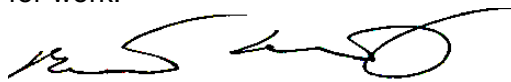
This decision does not address whether claimant is able and available for work throughout this time period. One must be able and available for work to be eligible to receive benefits. This matter is remanded to the fact finder to determine whether claimant is able and available for work.

Note to Claimant: Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. **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>.

DECISION:

The decision of the representative dated June 15, 2020, reference 01, is reversed. Claimant's separation from work was not in a manner that would disqualify her from benefits. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

This matter is remanded to the fact finder to determine whether claimant is able and available for work.



Blair A. Bennett
Administrative Law Judge

July 31, 2020
Decision Dated and Mailed

bab/scn