

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NACEY MANNEH
Claimant

PACKERS SANITATION SERVICES INC
Employer

APPEAL 21A-UI-06665-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/08/20
Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 – Overpayment
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

Packers Sanitation Services (employer) appealed an Iowa Workforce Development February 5, 2021, decision (reference 01) that concluded Nacey Manney (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 12, 2021. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Daniel Johnson, Development Training Manager and Acting Employee Retention Program Supervisor. The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, and which party should be charged for those 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 worked for the employer from September 4, 2018, to September 18, 2020, as a full-time food safety sanitor. She signed for receipt of the employer's handbook on September 4, 2018. The employer did not issue her any warnings during her employment.

On September 18, 2020, the claimant entered the locker room while talking on her phone. A co-worker assumed she was talking to her. The co-worker told the claimant she did not like it when she talked about her mother and father. The claimant told the co-worker she was not talking to her. The co-worker persisted with her complaints. The claimant commented that the co-worker might have mental issues. The co-worker slapped the claimant and she fell to the floor. The co-worker stepped on the claimant's stomach.

The claimant ran off to tell the employer about the situation. The employer suspended both workers and took statements from witnesses. On September 29, 2020, the employer terminated both workers because they violated the policy that prohibited fighting.

The claimant filed for unemployment insurance benefits with an effective date of November 8, 2020. Her weekly benefit amount was determined to be \$559.00. The department did not schedule a fact-finding interview. It interviewed the parties informally. The claimant received state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after November 8, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

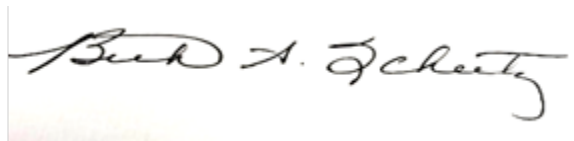
Iowa Admin. Code r. 871-24.32(4) provides:

(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 misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of job-related misconduct. The claimant was minding her own business when a co-worker starts something in a locker room that ends in the co-worker's physical attack. The victim of the attack does not carry the burden of the guilt by sheer means of participation in the event. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's February 5, 2021, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

May 19, 2021
Decision Dated and Mailed

bas/kmj