

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**GEIWAI A TAYLOR**

Claimant

**APPEAL NO. 20A-UI-13238-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 05/10/20**

**Claimant: Respondent (2R)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

Iowa Code Section 96.3(7) – Overpayment

Public Law 116-136, Sections 2104(b) – Federal Pandemic Unemployment Compensation

Public Law 116-136, Sections 2107 – Pandemic Emergency Unemployment Compensation

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 13, 2020, reference 01, decision that held the claimant was eligible for benefits, provided the claimant met all other eligibility requirements, and that the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 8, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on December 17, 2020. Claimant Geiwai Taylor did not provide a telephone number for the hearing and did not participate. Rita Atwood represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO, KPYX and KPY1) and received Exhibit 1 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant was overpaid regular state benefits.

Whether the claimant must repay overpaid regular state benefits.

Whether the employer's account may be charged.

Whether the claimant is overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits that the claimant must repay.

Whether the claimant is overpaid Pandemic Emergency Unemployment Compensation (PEUC) benefits that the claimant must repay.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Casey's as a part-time convenience store clerk until December 9,

2019, when Store Manager Rita Atwood discharged her from the employment. On December 8, 2019, the claimant was operating the cash register when she got into an argument with a customer. The claimant had notified Ms. Atwood earlier in the week that the customer had been directing racist and otherwise critical comments at the claimant. The claimant is African-American. The customer is Caucasian. The animosity between the customer and the claimant arose over a boyfriend or ex-boyfriend. On December 8, 2019, the claimant followed the customer outside the door. The claimant went to the customer's vehicle, opened the door to the vehicle and hit the customer. The customer called Ms. Atwood that evening to complain about the incident. Ms. Atwood reviewed surveillance video of the incident, which included video showing the customer leaving the store, the claimant following, the claimant opening the car door, and the claimant taking a swing at the customer. When Ms. Atwood spoke to the claimant on December 9, 2019, the claimant stated the customer had been directing racist comments and other comments, at the claimant, that the claimant lost self-control, that the claimant did follow the customer out of the store, and that the claimant did open the customer's car door. The claimant denied hitting the customer, but added that she wanted the customer to think she was going to hit the customer. The employer deemed the claimant's conduct a violation of the harassment and discrimination policy. The employer had provided the claimant online access to store policies from the start of the employment. The employer presented the claimant did a corrective action document. The claimant signed the document, but declined to add comments to the document.

The claimant established a claim for unemployment insurance benefits that was effective May 10, 2020. Casey's is the sole base period employer. Iowa Workforce Development set the claimant's weekly benefit amount for regular benefits at \$216.00. The claimant received \$3,283.00 in regular benefits for the period of May 10, 2020 through August 28, 2020. The claimant received \$6,600.00 in Federal Pandemic Unemployment Compensation for the 11-week period of May 10, 2020 through August 29, 2020. The claimant received \$1,800.00 in Lost Wages Assistance (LWA) benefits for the six-week period of July 26, 2020 through September 5, 2020. The claimant received \$2,808.00 in Pandemic Emergency Unemployment Compensation (PEUC) for 13 weeks between August 30, 2020 and November 28, 2020.

On October 7, 2020, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview to address the claimant's separation from the employer. The claimant did not participate. In lieu of participating, the employer submitted a copy of the notice of the fact-finding interview notice with a cursory letter that stated "PLEASE CONSIDER THIS WRITTEN RESPONSE AS THE EMPLOYER'S PARTICIPATION WITH THE FACT FINDER." This provided the claimant's name, the employer's name, dates of employment, pay rate, and job title. The body of the letter was limited to the following: "The claimant was discharged for inappropriate conduct in the workplace. The claimants [sic] actions constitute misconduct which is behavior that is not in accordance with accepted moral and professional standards."

## **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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4).

Threats of violence in the workplace constitute misconduct that disqualifies a claimant for benefits. The employer need not wait until the employee acts upon the threat. See *Henecke v. Iowa Dept. Of Job Services*, 533 N.W.2d 573 (Iowa App. 1995).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in

self-defense or the employee failed to retreat from the physical altercation. See *Savage v. Employment Appeal Board*, 529 N.W.2d 640 (Iowa App. 1995).

The evidence in the record establishes a December 9, 2019 discharge for misconduct in connection with the employment. Whatever issues the claimant had with the customer could have been and should have been handled differently, without violence or threat of violence. The claimant knowingly and intentionally acted with substantial disregard for the employer's interests when she abandoned her post to escalate a disagreement with the customer and when she engaged in aggressive, assaultive behavior at a time when she was supposed to be performing her work duties. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits paid for the period beginning August 30, 2020.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received \$3,283.00 in regular benefits for the period of May 10, 2020 through August 28, 2020, but this decision disqualifies her for those benefits. The benefits are an overpayment of benefits.

Iowa Administrative Code rule 871-24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.  
24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting

detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The employer had appropriate notice of the fact-finding interview, but did not participate in the fact-finding interview within the meaning of the law. The cursory letter the employer's representative provided in lieu of participating in the fact-finding interview was devoid of particulars concerning the conduct that factored in the discharge. Because the claimant did not receive benefits due to fraud or willful misrepresentation, and because the employer failed to participate in the finding interview, the claimant is not required to repay the overpaid regular state benefits. The employer's account may be charged for the \$3,283.00 in regular state benefits that were overpaid for the period of May 10, 2020 through August 28, 2020.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, the claimant is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC). The \$6,600.00 in Federal Pandemic Unemployment Compensation (FPUC) the claimant received for the 11-week period of May 10, 2020 through August 29, 2020 is an overpayment of benefits that the claimant must repay.

Because the claimant is disqualified for the regular benefits and had not requalified for benefits at the time she received \$2,808.00 in Pandemic Emergency Unemployment Compensation (PEUC) for 13 weeks between August 30, 2020 and November 28, 2020, the PEUC benefits the claimant received are also an overpayment of benefits that the claimant must repay. See Public Law 116-136, Section 2107(4)(B) ("the terms and conditions of State law which apply to claims

for regular compensation and to payment thereof ... shall apply to claims for pandemic emergency unemployment compensation and payment thereof...”).

**DECISION:**

The October 13, 2020, reference 01, decision is reversed. The claimant was discharged for misconduct in connection with the employment. The discharge was effective December 9, 2019. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$3,283.00 in regular benefits for the period of May 10, 2020 through August 28, 2020. The claimant is not required to repay the overpaid regular benefits. The employer's account may be charged for the overpaid regular benefits. The employer's account shall not be charged for benefits for the period beginning August 29, 2020. The claimant was overpaid \$6,600.00 in Federal Pandemic Unemployment Compensation for the 11-week period of May 10, 2020 through August 29, 2020. The claimant was overpaid \$2,808.00 in Pandemic Emergency Unemployment Compensation (PEUC) for 13 weeks between August 30, 2020 and November 28, 2020. The claimant must repay the overpaid FPUC and PEUC benefits.

This matter is **remanded** to the Benefits Bureau for entry of an overpayment decision regarding the \$1,800.00 in Lost Wages Assistance (LWA) benefits the claimant received for the six-week period of July 26, 2020 through September 5, 2020.



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James E. Timberland  
Administrative Law Judge

December 30, 2020  
Decision Dated and Mailed

jet/scn

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**