IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ANITA L SMITH Claimant **CNH AMERICA LLC** Employer	**APPEAL 20A-UI-14453-S2-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 12/08/19** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 28, 2020, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for dishonesty. The parties were properly notified of the hearing. A telephone hearing was held on January 25, 2021. The claimant Anita L. Smith participated. Employer CNH America, LLC did not register for the hearing and did not participate. Exhibits A-C were admitted.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's evidence: Claimant was employed full time as a shipping materials specialist from March 11, 2007, until this employment ended on August 5, 2020, when she was discharged.

Employer closed its doors for several months due to COVID-19 and claimant filed for weekly unemployment benefits during this closure. Claimant began taking intermittent time off of work using FMLA leave beginning in early June 2020. Claimant was concerned because future layoffs would take place so she contacted Iowa Workforce Development (IWD) to seek advice on whether she should continue filing, in case a layoff occurred. She was advised by the representative to do so long as she reported any wages and her availability for work. Claimant continued to file weekly unemployment claims and reported when she was able to and available for work and reported any wages she received each week.

On July 15, 2020, human resource generalist David Jacobs sent an email to claimant. The email stated employer received notification that claimant was filing for unemployment benefits while it had work available for her and she was taking FMLA leave. (Exhibit A) Jacobs asked her to withdraw her claim or she faced disciplinary action, including termination. Claimant replied to

Jacobs that when she filed she marked herself as not able to or available for work so she expected the claims would be denied.

Claimant emailed Iowa Workforce Development (IWD) on July 15, 2020, asking for her claim to be withdrawn. (Exhibit B) On July 25, 2020, claimant received a reply from IWD asking for additional information. Claimant provided the additional information.

On August 5, 2020, employer terminated claimant's employment for violating its standards of conduct number 29 by providing false and misleading information to the company. (Exhibit C)

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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.

A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). Ordinary negligence is all that is proven here.

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. Training or general notice to staff about a policy is not considered a disciplinary warning.

In this case, the employer did not participate in the hearing. No evidence was presented that claimant received any warnings about her conduct or that she had any wrongful intent. There is no evidence of misconduct by claimant. Employer has not met its burden of proving disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The October 28, 2020, (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Stephanie Adkisson
Administrative Law Judge
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February 16, 2021
Decision Dated and Mailed

sa/scn