

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ANGELA E YETTER**  
Claimant

**WEST LIBERTY FOODS LLC**  
Employer

**APPEAL 20A-UI-02904-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/08/20**  
**Claimant: Respondent (2R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
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:**

On April 7, 2020, West Liberty Foods LLC (employer) filed an appeal from the March 31, 2020 (reference 01) unemployment insurance decision that determined Angela Yetter (claimant) was eligible to receive unemployment insurance benefits.

A telephone hearing was held on May 5, 2020. The parties were properly notified of the hearing. Employer participated by HR Supervisor Monica Dyar. Claimant did not register a number for the hearing and did not participate.

Employer's Exhibits 1-6 were admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits or should employer be charged due to employer participation in fact finding?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time slicer technician. Claimant's first day of employment was April 24, 2017. The last day claimant worked on the job was February 14, 2020. Claimant's immediate supervisor was Phillip Youmans. Claimant separated from employment on February 19, 2020. Claimant was discharged by Dyar on that date.

Claimant was discharged for using abusive or threatening language or gestures toward others and using foul or indecent language. This violated employer's policies, which claimant was aware of. See Exhibits 1 and 2.

The most recent incident occurred on February 14, 2020. On that date, claimant "flipped off" a coworker and said "fuck you" to him. Claimant did this because she was frustrated with an issue with the packaging machine at that time. She had previously told the coworker she knew of the issue and he needed to give her a break. See Exhibits 4, 5, 6.

Claimant had previously been warned for similar conduct. She was suspended for two days in July 2019 for throwing a piece of meat weighting between 10 and 15 pounds over a coworker's head during an argument. Claimant had previously been verbally warned about yelling and cursing at coworkers. Claimant was a team leader, so it was particularly important that she maintain and demonstrate appropriate behavior.

Employer did not participate in the fact-finding interview because the notice of interview did not come to Dyar's attention in a timely manner.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$396.00 for a total of eight weeks, from the week ending March 14, 2020 and continuing through the week ending May 2, 2020. The total amount of benefits paid to date is \$3,168.00.

Claimant has also received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of four weeks, from the week ending April 4, 2020 and continuing through the week ending April 25, 2020. The total amount of FPUC Benefits paid to date is \$2,400.00.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the March 31, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits is REVERSED. Claimant is not eligible for benefits until she earns wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

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 provides in relevant part:

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 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 v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

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).

Employer has carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2).

Claimant repeatedly violated employer's policies regarding abusive, threatening, and indecent conduct despite being aware of the policies and repeatedly warned. The most recent incident was another clear violation of those policies. Her violations were deliberate acts and constituted a material breach of the duties and obligations arising out of her contract of employment. As such, benefits must be denied.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(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 unemployment insurance system shows claimant has received weekly benefits in the amount of \$396.00 for a total of eight weeks, from the week ending March 14, 2020 and continuing through the week ending May 2, 2020. The total amount of benefits paid to date is \$3,168.00. Because the administrative law judge now finds claimant ineligible for benefits, she has been overpaid benefits in that amount.

However, employer did not participate in the fact-finding interview because the notice of interview did not come to Dyar's attention in a timely manner. Because employer failed to participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment, benefits shall not be recovered from claimant.

**DECISION:**

The March 31, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits is REVERSED. Claimant is not eligible for benefits until she earns wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Claimant has been overpaid benefits in the amount of \$3,168.00. However, because employer failed to participate at the fact-finding interview, benefits shall not be recovered.

**REMAND:**

The issue of potential overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits is remanded to the Benefits Bureau of IWD for an investigation and decision.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

May 6, 2020  
Decision Dated and Mailed

abd/scn

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **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>.