

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ASHLEY L BROWN
Claimant

APPEAL NO. 21A-UI-07644-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTHWEST IOWA HOSPITAL CORP
Employer

OC: 01/24/21
Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.3(7) – Overpayment
Public Law 116-136, §2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 10, 2021, reference 01, decision that held the claimant was eligible for benefits provided she met all other eligibility requirements and that employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on January 21, 2021 for no disqualifying reason. After due notice was issued, a hearing was held on May 25, 2021. Claimant, Ashley Brown, participated. Amy Goss, Human Resources Business Partner, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. 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 benefits.
Whether the claimant must repay overpaid regular benefits.
Whether the claimant was overpaid Federal Pandemic Unemployment Compensation.
Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Northwest Iowa Hospital Corporation as a part-time phlebotomist from June 2020 until January 21, 2021, when the employer discharged her from the employment.

The incident that triggered the discharge occurred on January 17, 2021. On that day, the claimant went to the workplace, a hospital, at a time when she was off-duty and not scheduled to work. The employer lacks a policy that would address the claimant's off-duty conduct. The claimant went to the fourth floor of the hospital, where nurses and other staff were caring for

patients. The claimant was upset that her cousin and roommate, also a hospital employee, had been in a room with a patient with a communicable disease, had potentially been exposed to a communicable disease, and had gone home to their shared residence after being exposed. The claimant went to hospital with the intention to demand an explanation from the nurse who had been caring for the patient in question. The claimant went to the hospital in street clothes and without her name tag. The claimant spoke to a nurse and demanded to speak to the nurse in question about a patient. The nursing staff told the claimant the nurse was busy caring for a patient. The claimant said she would just wait. The nursing staff repeatedly asked whether the claimant was a family member of a patient. The claimant said she was not a family member. The nursing staff repeatedly asked the claimant to identify herself. The claimant said she worked in the lab, but declined to identify herself. The nursing staff became concerned about the claimant's purpose and presence on the hospital floor. The nursing staff summoned a supervisor and a security officer. The claimant became loud and disruptive. Unbeknownst to the nursing staff and the security officer, the claimant brought a recording device onto the hospital floor and was recording while she was on the hospital floor. The security recognized the claimant as a lab employee. After the security officer arrived, the claimant exited the fourth floor and went to the lab to collect her personal effects. A nurse followed the claimant to the lab and spoke to the claimant's supervisor. As the supervisor struggled to understand what had just transpired, the claimant began to leave. The supervisor told the claimant she could not leave. The claimant walked out anyway. If the claimant has a question or concern about an infection control issue, the hospital had a protocol for dealing with such matters. The employer had reviewed the protocol at the start of the claimant's employment and the claimant was aware of the protocol.

The employer considered two earlier incidents when making the decision to discharge the claimant from the employment. On August 4, 2020, the claimant cornered and yelled at a coworker because the coworker was performing stocking duties rather than performing blood draws. The employer asserts the claimant also turned off her wireless communication device, but the claimant denies that allegation. The employer verbally counseled the claimant regarding the incident about the employer's policy prohibiting bullying. The claimant acknowledged that he had handled the matter incorrectly.

On September 8, 2020, the claimant engaged in a yelling match with a nurse in a hallway and within hearing of other staff and patients. The claimant was upset that the nursing staff had summoned a second phlebotomist to take a blood draw that was late, rather than waiting for the claimant to get to the blood draw. The claimant lectured the nurse on lab protocol regarding prioritizing work and stated, "I am sorry you don't know the policy." The employer verbally counseled the claimant regarding the interaction and advised the claimant to remember the workplace was a hospital.

The claimant established an original claim for benefits that was effective January 24, 2021. This employer is a base period employer. The claimant received \$4,992.00 in regular benefits for 12 weeks between January 24, 2021 and April 17, 2021. The claimant also received \$3,600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for those same 12 weeks.

Iowa Workforce Development did not schedule a fact-finding interview to address the claimant's separation from the employment. Instead, a Benefits Bureau deputy held a "cold-call" fact-finding interview. The deputy took a statement from the claimant. The deputy did not speak to the employer. The employer had provided a protest of the claim via SIDES. In the protest, the employer outlined the concerns associated with the final incident and referenced prior incidents without providing detail. The claimant provided candid answers to the deputy's questions. The claimant told the deputy she received the work rules at the start of the employment. The claimant told the deputy that she went to the hospital in the final instance because she was mad about her coworker being exposed. The claimant denied she had yelled at the nurse in that

instance. The claimant told the deputy she had yelled at a coworker in August 2020 and had received a verbal warning in connection with that incident.

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).

An employer has the right to expect decency and civility from its employees. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The weight of the evidence establishes a discharge for misconduct in connection with the employment. The evidence in the record establishes a pattern of aggressive and disruptive conduct sufficient to indicate an intentional and substantial disregard of the employer's interests. The claimant's repeated unreasonable refusal to comply with the employer's reasonable directives to act in a civil manner and in compliance with the employer's work rules constituted insubordination. On at least three occasions, the claimant knowingly and intentionally violated hospital protocol in a way that disrupted hospital operations. In August 2020, the claimant directed her belligerent conduct at a coworker and received a verbal warning regarding the bullying policy. In September 2020, the claimant directed her belligerence at a nurse in a manner and place that disrupted operations. The employer again verbally counseled the claimant and reminded her that she worked in a hospital. On January 17, 2021, the claimant went to the hospital in a huff and directed her belligerence at nursing staff in a manner and place that once again disrupted hospital operations. The nursing staff were reasonably concerned about the claimant presence, her purpose, her demand to speak with the nurse in question, and her refusal to identify herself. Though the employer was unaware of the recording device at the time, the claimant's decision to use such a device on a hospital floor where patients were receiving care is a further willful and wanton disregard of the employer's interests, as well as a disregard of patient privacy. By choosing to go to the workplace and create a disruption on January 17, 2021, the claimant caused the off-duty misconduct to be misconduct in connection with the employment. The claimant is disqualified for benefits until she has worked in and been paid wages for insured equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account will not be charged for benefits for the period beginning April 18, 2021.

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 based period 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 \$4,992.00 in regular benefits for 12 weeks between January 24, 2021 and April 17, 2021, but this decision disqualifies the claimant for those benefits. The benefits are an overpayment of benefits. The employer did not participate in the fact-finding interview, but the employer was not provided a reasonable opportunity to participate. The employer's account will not be charged for the overpaid regular benefits. Because the claimant did not

engage in fraud or willful misrepresentation in connection with the fact-finding interview, and because the employer did not participate, the claimant is not required to repay the overpaid regular benefits.

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, except that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

(3) Recovery by state agency —

(A) In general.—The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any Federal Pandemic Unemployment Compensation payable to such individual or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the Federal Pandemic Unemployment Compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

(B) Opportunity for hearing.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice

thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(4) Review.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

Because the claimant is disqualified for benefits, the \$3,600.00 in FPUC benefits the claimant received for 12 weeks between January 24, 2021 through April 17, 2021 is an overpayment of benefits. The claimant must repay the overpaid FPUC benefits unless the claimant applies for and is approved for waiver of repayment of the FPUC overpayment. See below.

DECISION:

The March 10, 2021, reference 01, decision is reversed. The claimant was discharged for misconduct in connection with the employment. 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 was overpaid \$4,992.00 in regular benefits for 12 weeks between January 24, 2021 and April 17, 2021. The claimant is not required to repay the overpaid regular benefits. The employer's account shall not be charged for benefits, including overpaid benefits. The claimant is overpaid \$3,600.00 in FPUC benefits for 12 weeks between January 24, 2021 and April 17, 2021. The claimant must repay the overpaid FPUC benefits unless the claimant applies for and is approved for waiver of repayment of the FPUC overpayment. See below.



James E. Timberland
Administrative Law Judge

September 17, 2021
Decision Dated and Mailed

jet/scn

Note to Claimant. This decision determines you have been overpaid FPUC under the CARES Act. 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. Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.