

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VICKY J TORRESON
Claimant

APPEAL 21A-UI-20989-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOMESTEAD COOPERATIVE OF SPIRIT L
Employer

**OC: 08/01/21
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Homestead Cooperative of Spirit L., the employer/appellant, filed an appeal from the September 15, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 10, 2021. The employer participated through Cal Pauling, president, Board of Directors. Ms. Torreson participated and testified. The administrative law judge took official notice of the administrative record. Claimant's Exhibit A was admitted into evidence.

ISSUES:

Was Ms. Torreson discharged for disqualifying job-related misconduct?
Was Ms. Torreson overpaid benefits?
If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Torreson began working for the employer in December 2018. She worked as a part-time property manager. Her employment ended on August 2, 2021.

On Friday, July 16, 2021, the cooperative had a board meeting. A vote was held to remove the entire board from office and install a new board. There was a dispute about whether the vote was valid and which board was the legally authorized board. After the vote, the new board did not contact Ms. Torreson. The old board president told Ms. Torreson that she could work from home the next week. Ms. Torreson asked for unpaid time off on July 26 and 27. The old board president gave her permission to take time off. Ms. Torreson returned to work on July 28.

On July 28, some members of the new board met with Ms. Torreson about her job duties. The parties agreed that the entire new board would meet with Ms. Torreson on Monday, August 2. On Saturday, July 31, the new board met and decided to terminate Ms. Torreson's employment

because she had insulted residents and she had not done her job. On Monday, August 2, three new board members met with Ms. Torreson and asked her to resign. Ms. Torreson refused to do so. The board then terminated Ms. Torreson's employment. The vice-president of the new board told Ms. Torreson that the new board had ended her employment for personal reasons because she was in cahoots with the old board.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Torreson 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.

In this case, the employer has not established misconduct on the part of Ms. Torreson. The new board did not like how the cooperative was being run by the old board so they essentially fired the old board, and fired Ms. Torreson. The employer provided no details about Ms. Torreson insulting residents, or not doing her job. Since the employer has failed to establish misconduct, benefits are allowed.

Since Ms. Torreson is eligible for benefits, the issues of repayment and chargeability are moot.

DECISION:

The September 15, 2021, (reference 01) unemployment insurance decision is affirmed. Ms. Torreson 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.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

December 28, 2021
Decision Dated and Mailed

dz/scn