

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TONYA PARRISH
Claimant

APPEAL 21A-UI-12282-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCKESSON CORPORATION
Employer

OC: 08/16/20
Claimant: Respondent (1R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant, McKesson Corporation, filed an appeal from the April 30, 2021 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 26, 2021. The claimant, Tonya Parrish, participated. The employer participated through Sam Oman for approximately 18 minutes. Mr. Oman remained connected to the line but was unresponsive the remainder of the hearing.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer’s account be waived?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a materials handler and was separated from employment on December 18, 2020, when she was discharged.

Claimant last performed work on December 1, 2019. Claimant was absent from work initially due to a broken toe which required her to wear a boot. The employer would not accommodate the boot in the warehouse and claimant was placed on a leave of absence. Claimant remained

on a leave of absence with the COVID-19 pandemic because she was high risk due to lung issues if exposed to COVID-19.

Employer approved claimant's absence and claimant remained in contact with management. Claimant believed she was still employed and would return upon recovery. Claimant had no warnings or agreed upon return to work date. Claimant was unaware her job was in jeopardy. Claimant maintained contact with the employer, and had not been released to return to work as of December 18, 2020. Claimant was informed the employer would no longer hold her job open and she was discharged (Employer Exhibit 1).

The administrative record reflects that claimant has not received regular state unemployment benefits since her December 18, 2020 separation. The administrative law judge would note the claimant was denied benefits effective August 16, 2020 due to being on a leave of absence (Reference 01 decision). Administrative records dated March 2021 reflect claimant may have been approved for Pandemic Unemployment Assistance Benefits (PUA).

The administrative record also establishes that the employer did not participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“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).

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. The employer has the

burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct*. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The credible, undisputed evidence in this case is that claimant was discharged, without warning, while on an approved leave of absence. Claimant had made employer she had a broken toe and then was restricted from work due to being high-risk if exposed to COVID-19. Employer agreed to claimant's absence and claimant maintained contact with the employer. For unknown reasons, employer moved to discharge claimant before she was able to return. The employer did not participate in the majority of the hearing to refute the credible evidence presented by claimant. The employer has failed to meet its burden of proof in establishing a current act of disqualifying job-related misconduct. Accordingly, benefits are allowed, if she is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment of regular unemployment insurance benefits and relief of charges are moot. Because the claimant is allowed regular unemployment insurance benefits, she is also eligible for FPUC, provided she is otherwise eligible. See PL116-136, Sec. 2104. The employer is not charged for these federal benefits.

The issue of whether claimant is able and available to work effective December 19, 2020 is remanded to the Benefits Bureau for an initial investigation.

DECISION:

The April 30, 2021, (reference 02) unemployment insurance decision is AFFURNED. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The employer's account cannot be relieved of charges associated with the claim for regular unemployment insurance benefits. The claimant is also eligible for FPUC, provided she is otherwise eligible.

REMAND:

The issue of whether claimant is able and available to work effective December 19, 2020 is remanded to the Benefits Bureau for an initial investigation.



Jennifer L. Beckman
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July 30, 2021

Decision Dated and Mailed

jlb/kmj