

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LISA WATERS**

Claimant

**APPEAL 20A-UI-00676-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 12/22/19**

**Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

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

**STATEMENT OF THE CASE:**

On January 23, 2020, Casey's Marketing Company (employer) filed an appeal from the January 13, 2020 (reference 02) unemployment insurance decision that determined Lisa Waters (claimant) was eligible to receive unemployment insurance benefits.

A telephone hearing was held on February 7, 2020. The parties were properly notified of the hearing. Employer participated by Store Manager Tanya Muller. Claimant participated personally.

Official notice was taken of the administrative record, including claimant's payment history on the unemployment insurance system and the fact-finding worksheet. Employer's Exhibit 1 was admitted.

**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 and/or charge employer 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 kitchen employee. Claimant's first day of employment was March 21, 2018. The last day claimant worked on the job was December 18, 2019. Claimant's immediate supervisor was Muller. Claimant separated from employment on December 19, 2019. Claimant was discharged on that date.

Claimant walked off the job on December 18, 2019. Claimant did this because she was frustrated with instructions from Muller to not use items that had not been properly labeled. Because claimant could not use these items, she did not have enough of the necessary items to make sandwiches during lunchtime. Claimant asked Muller what to do, and claimant did not feel Muller was supportive or constructive in her response. After this discussion, claimant took the trash out and did not return to work.

Muller eventually realized she had not seen claimant for about 20 minutes and inquired as to where she went. Her coworkers did not know. Muller went out to the parking lot and saw that claimant's car was gone. Muller then attempted to contact claimant several times but was unable to reach her. Muller then completed a corrective action statement and immediately mailed it to claimant. Claimant received it the following day. Exhibit 1. Claimant had not been previously warned or disciplined for similar conduct. Claimant had not previously talked to Muller about quitting, although Muller had heard rumors that she was considering quitting or transferring after Muller took over as store manager on December 1.

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

For the reasons set forth below, the January 13, 2020 (reference 02) unemployment insurance decision that determined claimant was eligible for benefits is AFFIRMED.

The first issue that must be addressed in this case is whether claimant's separation was a quit or a discharge. The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The administrative law judge finds employer has failed to prove that claimant voluntarily quit. While claimant clearly walked off work on December 18, she did not tell anyone she was quitting or otherwise express an intention to end the employment relationship. Because the claimant did not voluntarily quit, the separation from employment must be analyzed as a discharge.

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 not 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). While the administrative law judge in no way endorses claimant's conduct on December 18, her conduct is most aptly described as an isolated incident of unsatisfactory conduct or poor judgment rather than a willful or wanton disregard of employer's interest. Claimant was frustrated on the day in question and unquestionably handled the situation poorly. However, claimant had never been warned or disciplined for similar behavior in the past, and no evidence was presented that her conduct caused substantial harm to employer. The administrative law judge cannot find claimant committed substantial work-related misconduct under these facts.

Because the administrative law judge finds claimant is not disqualified from benefits, the other issues listed in the notice of appeal need not be addressed.

**DECISION:**

The January 13, 2020 (reference 02) unemployment insurance decision is AFFIRMED. Claimant is eligible for benefits, so long as she meets all other eligibility requirements.

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Decision Dated and Mailed

abd/rvs