

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JONATHAN W STENSLAND**  
Claimant

**FAREWAY STORES INC**  
Employer

**APPEAL 21A-UI-01509-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/06/20  
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On December 14, 2020, Fareway Stores Inc. (employer/appellant) filed an appeal from the December 8, 2020 (reference 02) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed on July 19, 2020 without a showing of misconduct.

A telephone hearing was held on February 19, 2021. The parties were properly notified of the hearing. Employer participated by HR Generalist Bret Grimes. Jonathan Stensland (claimant/respondent) did not register a number for the hearing and so did not participate.

Official notice was taken of claimant's payment history on the unemployment insurance system.

**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 traveling construction technician. Claimant's first day of employment was September 16, 2019. The last day claimant worked on the job was June 30, 2020. Claimant's immediate supervisor was Todd Wendell. Claimant's schedule was Monday through Thursday from 6 a.m. to 6 p.m. Claimant separated from employment on July 19, 2020. Claimant was discharged on that date.

Claimant was discharged due to a variety of performance issues, including poor communication. The most recent incidents leading to the discharge occurred on July 14, 15, and 16, 2020. Claimant texted Grimes on July 13, 2020 about a doctor's appointment regarding a neck-related issue or injury. Grimes was not the person claimant was supposed to report absences to. Grimes

responded that employer would need a release from claimant's doctor allowing claimant to return to work. He also reminded claimant he needed to contact his crew lead if he was going to be absent due to the neck issue. Claimant did not communicate with employer after that date. Claimant had previously failed to report when he was going to be late or absent and failed to return forms when he was out. He had also previously called the wrong crew leader to report absences.

Claimant has not received weekly benefits from the effective date of the claim to present.

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

For the reasons set forth below, the December 8, 2020 (reference 02) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed on July 19, 2020 without a showing of misconduct is REVERSED.

- 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's poor communication, including his most recent failure to properly report absences or when he might be able to return, constitutes current substantial misconduct such that he is disqualified from benefits.

The issue of whether claimant has been overpaid benefits need not be addressed, as claimant has not received weekly benefits from the effective date of the claim to present.

**DECISION:**

The December 8, 2020 (reference 02) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed on July 19, 2020 without a showing of misconduct is REVERSED. Claimant is disqualified from benefits from the date of discharge and continuing until he earns wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
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March 2, 2021  
Decision Dated and Mailed

abd/scn

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.