

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LAURA SULLIVAN**  
Claimant

**APPEAL 24A-UI-02677-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ST FRANCIS VETERINARY CARE PLLC**  
Employer

**OC: 05/28/23  
Claimant: Respondent (1)**

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Iowa Code §96.5(2)a-Discharge/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 March 5, 2024, the employer/appellant filed an appeal from the February 27, 2024, (reference 05) unemployment insurance decision that allowed benefits based on claimant being dismissed on January 5, 2024 for unsatisfactory work. The parties were properly notified about the hearing. A telephone hearing was held on April 2, 2024. Claimant participated. Employer participated through Co-Owner, John O’Grady. Co-Owner and Veterinarian, Dr. Allison O’Grady, testified on behalf of the employer. Administrative notice was taken of claimant’s unemployment insurance benefits records, including DBRO.

**ISSUES:**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Is the claimant overpaid benefits?
- III. Should the claimant repay benefits?
- IV. Should the 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 began working for employer on August 29, 2023. The employer is a small veterinary clinic in a small office. Claimant last worked as a full-time veterinary assistant.

The employer became dissatisfied with the claimant's performance and conduct. When claimant was hired she informed the employer she had blood-drawing and IV catheter placement skills. The employer was not satisfied with claimant’s ability to perform these duties.

Sometime in November the employer prepared an advertisement that was mailed to residence in their business area. The advertisement contained typographical errors. Claimant refused to fix the errors.

On November 11, 2023, November 14, 2023, and November 29, 2023, claimant used profanity while at work. Claimant did it in front of Dr. O'Grady and on at least one occasion said it in front of the high school student worker. In each of these instances Dr. O'Grady told the claimant not to use profanity while she was at work. Dr. O'Grady did not warn the claimant that if she continued to use profanity that she would be subject to disciplinary action up to and including discharge.

On November 22, 2023. The regular receptionist was away and a substitute receptionist was filling in for the day. The substitute receptionist had many questions and needed assistance on how to perform her duties. Claimant asked the substitute receptionist to not come talk to her when she was in a room and she would come to her when she got out of the room. The employer was not satisfied with the claimant's direction to the receptionist. On November 27, 2023, the employer provided the claimant a paper that laid out the claimant's specific veterinary duties and told her to have patience when she is teaching the receptionist. The paper did not specify that claimant was placed on probation for her actions and it did not warn claimant she would be subject to discharge if she continued to address the receptionist rudely.

On December 1, 2023, Dr. O'Grady asked the claimant to clean something off the floor. Claimant did not complete the task and Dr. O'Grady made the decision at that point that the claimant needed to be discharged.

On December 6, 2023, the clinic had its grand opening. Dr. O'Grady asked the claimant to move her vehicle to street parking so the customers would have space to park. Claimant did not move her vehicle because she had valuables in her car and if she moved her vehicle to the street then she would not be able to see her vehicle and prevent it from being broken into.

On December 4, 2023, the claimant was a half an hour late to work. Claimant did not notify the employer in advance that she would be late. Claimant was late due to traffic. On December 9, 2023, the claimant was fifteen minutes late and the claimant did not notify Dr. O'Grady that she would be late for work. Claimant does not recall why she was late. Claimant was late five more times between the dates of December 11th and December 29th. The employer could not provide specific details regarding the dates of the tardy arrivals. Claimant did not receive a warning for her tardiness.

The claimant last worked for the employer on December 29, 2023. On this day the claimant raised her voice at the receptionist. Claimant left on vacation and Dr. O'Grady decided to post the claimant's job so she could obtain a replacement. On January 5, 2024, Dr. O'Grady notified the claimant while she was on vacation that she was discharged and gave the reason as wanting someone with more experience. Claimant never received a verbal or written warning that placed her on notice that her job was in jeopardy if she did not improve her conduct, use of profanity, job performance, or how she treated her co-workers.

Claimant filed an additional claim for benefits on January 21, 2024. Claimant's weekly benefit amount is \$381.00. (DBRO). The claimant began receiving partial benefits the week beginning January 21, 2024, and received them through March 30, 2024. Claimant has received ten weeks of benefits worth a gross total amount of \$2,327.00. (DBRO).

The employer attempted to participate in the fact-finding interview with Iowa Workforce Development. The employer was dropped from the call and the employer was not able to reconnect with the fact-finder after attempting to call back.

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

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

Iowa Code section 96.5(2)a and d provide:

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.

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(1) Material falsification of the individual's employment application.

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

(3) Intentional damage of an employer's property.

(4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer or a combination of such substances, on the employer's premises in violation of the employer's employment policies.

(5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment

policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

(7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.

(8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.

(9) Excessive unexcused tardiness or absenteeism.

(10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.

(11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.

(12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

(13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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).

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 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 the 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). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

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. However, if the employer 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.

One of the issues in this case is whether the claimant's termination was based on a current act. The employer cited a number of instances that they considered misconduct that occurred in November and the beginning of December of 2023 that resulted in claimant's discharge. The employer testified that they knew they wanted to discharge claimant on December 1, 2023, after the claimant did not clean up the floor. The court in *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988) held that in order to determine whether conduct prompting the discharged constituted a "current act," the date on which the conduct came to the employer's attention and the date on which the employer notified the claimant that said conduct subjected the claimant to possible termination must be considered to determine if the termination is disqualifying. The court in *Milligan v. Employment Appeal Board*, 802 N.W.2d 238 (Iowa App. 2011), held that it is reasonable to allow a company time for its human resources department to assess the situation once the Employer learned of the misconduct, and notified the Claimant that his job was in jeopardy pending the outcome of the investigation. [T]he purpose of [the current act] rule is to assure that an Employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises. For example, an Employer may not convert a lay off into a termination for misconduct by relying on past acts." *Milligan v. EAB*, 10-2098, slip op. at 8 (Iowa App. June 15, 2011). We determine the issue of "current act" by looking to the date of the termination and comparing this to the date the

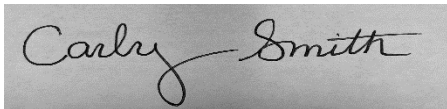
misconduct first came to the attention of the Employer. *Greene v. EAB*, 426 N.W.2d 659 (Iowa App. 1988)(using date notice of disciplinary meeting first given).

In this case the employer did not discharge the claimant until January 5, 2024, which is thirty-six days after the employer made the determination they would be discharging the claimant. Typically a claimant can only be disqualified for benefits based on something that occurred within ten days of the claimant's discharge; i.e. it needs to be a current act of misconduct. In this case, the current acts that could be considered misconduct are the attendance issues and an issue with claimant raising her voice at the receptionist on December 29, 2023. The problem with the attendance issue is that the employer could not provide specific details or dates of claimant's attendance issues; which is their burden of proof. Additionally, the employer did not warn the claimant regarding her attendance and did not warn claimant on how she was treating the receptionist. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct and that the claimant's job is in jeopardy if they do not improve. Without fair warning, an employee has no reasonable way of knowing that there are changes that need to be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as the employer had not previously warned claimant about the issues leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. As a result, benefits are allowed, provided the claimant is otherwise eligible.

Since the claimant is allowed benefits the issues of whether the claimant was overpaid benefits and whether the claimant is required to repay the benefits are moot.

**DECISION:**

The February 27, 2024, (reference 05) unemployment insurance decision is AFFIRMED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



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Carly Smith  
Administrative Law Judge

April 4, 2024  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.