

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARISSA M ROWEN
Claimant

PACKERS SANITATION SERVICES INC
Employer

APPEAL NO. 21A-UI-01470-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Respondent (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation
Iowa Admin. Code r. 871-24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated December 14, 2020, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 19, 2020. Claimant participated personally and with attorney Teri Jo Schmitz. Employer participated by Andrea Ramirez. Claimant's exhibits A-F and Employer's exhibits 1-6 were admitted.

ISSUES:

Whether claimant was discharged for misconduct?

Whether claimant was overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

Is the claimant eligible for FPUC or LWAP benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 8, 2020. Employer discharged claimant on October 19, 2020 because claimant was harassing a coworker after that coworker shared information concerning claimant's being absent from work while on the clock.

Claimant was disgruntled with a supervisor who she believed picked on her. Back in May 2020, claimant's supervisor wrote claimant up multiple times for leaving work without clocking out. One of those write-ups was dismissed by employer after further investigation.

On October 6, 2020 claimant became upset because her supervisor chose to move items from her area into an area claimant shared with another coworker. Once the supervisor left the area, claimant moved items out of claimant's area that she did not feel belonged there. Upon the supervisor's return, the supervisor became very upset that the claimant had moved the items back to where they had been previously. The supervisor yelled at claimant and claimant became emotional. She wrote a three-page complaint that was sent to human resources and sent other complaints to two other managers that operated over claimant's supervisor.

By October 7, neither the human resources department nor upper management had directly responded to claimant's complaints. This caused claimant to get more upset. She walked out of the office and went to her car for an hour without clocking out.

Claimant was suspended by employer on October 8, 2020 as they conducted an investigation of claimant's allegations.

On October 14, 2020 claimant conducted a phone interview with human resources. During the phone interview claimant was not only asked about the circumstances giving rise to claimant's written complaints, but also about claimant walking out of work without clocking out on October 7, but also other questions about not working when she was supposed to. Claimant reasoned that these questions were asked because her coworker and office mate shared information about claimant walking out of work. Claimant then sent an email to her office mate stating that claimant didn't want her coworker to talk with her. She used foul language, all caps, and stated to her coworker that she was a snitch.

After employer's investigation, they chose to terminate claimant. Employer's termination paperwork did not include any information surrounding the reason for termination and employer's representative did not share a reason at the time of separation.

Claimant has not received state unemployment benefits since the date of job separation.

Claimant has not received Federal Pandemic Unemployment Compensation benefits since the date of job separation.

Employer did not substantially participate in fact finding in this matter.

REASONING AND CONCLUSIONS OF LAW:

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(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(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.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning harassing a coworker.

The last incident, which brought about the discharge, constitutes misconduct because claimant wrote an incendiary text to her office mate because the office mate had been honest regarding claimant's unexcused absence from work. Claimant had a difficult relationship with her supervisor. She was certainly within her rights to complain. Claimant then took the inappropriate step to leave the office during the day because she was upset that her complaint had not been addressed as quickly as she wanted it to be. Then when her coworker shared information about this absence, claimant lashed out against her coworker. This coworker did nothing wrong, but claimant called her a snitch for being honest. This is harassment, and

creates a poisonous environment. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

The overpayment issue was addressed. Claimant has received no benefits since the day of quit, so she has not been overpaid state or federal unemployment benefits.

As claimant has not been overpaid benefits, the issue of employer participation is moot.

DECISION:

The decision of the representative dated December 14, 2020, reference 02, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

March 1, 2021
Decision Dated and Mailed

bab/lj