IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

HANNAH L ELLINGSON Claimant **ALLIANT ENERGY CORPORATE SVCS INC** Employer	**APPEAL 21A-UI-23601-DH-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/12/21** **Claimant: Appellant (2)**

Iowa Code § 96.2(A) - Discharge for Misconduct
Iowa Code § 96.5(1) - Voluntary Quit
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.1(113)c - Discharge for Violation of Rules
Iowa Admin. Code r. 871-24.32(8) - Current Act

STATEMENT OF THE CASE:

Claimant/appellant, Hannah Ellingson, appealed the October 20, 2021, (reference 01) unemployment insurance decision that denied unemployment insurance benefits due to a September 15, 2021 discharge for failing violating a known company rule. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for December 15, 2021, at 10:00 AM. The cases were consolidated. The claimant participated. The employer, Alliant Energy Corporate Svcs Inc, ailed to call into the hearing and did not participate. Judicial notice was taken of the administrative file and the records contained therein.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant was employed full-time as a customer service associate with a set schedule. She started work in March 2020. Her last day worked was also the day she was discharged for violating "call center procedures" which she "received training on last year" and this "created a conflict of interest and is not in line with" the employer's "Value 'Do the Right Thing.'" See Employer's September 15, 2021 termination of employment letter submitted for Fact Finding.

The September 15, 2021 discharge from employment was due to a July 22, 2021 and an August 10, 2021 incident that came to the employer's attention on August 27, 2021. The policy in question involves taking action on an account from a non authorized person whom claimant knew personally. Claimant did not believe her job was in jeopardy, as she believed the acts were not contrary to policy.

The July 22, 2021 incident involved a request for the temporary power connection to be changed to a perminate power connection. This request can be called in and made by anyone, without the normal verification, as the order is entered into the system and at a later date, another party verifies the information in the order request prior to implementing the change. As such, claimant believed she was within the policy guidelines, since anyone can make the request and another employer does verification at a later point.

Claimant was working remotely, at a co-worker's residence. The August 10, 2021 incident involved the co-worker requesting a change on her account. Claimant looked and saw that the co-worker was not listed as an authorized person on the account, but the co-worker's boyfriend was listed as an authorized person. The boyfriend, whom claimant did not know, other than their name and they were the co-worker's boyfriend, was present and verbally authorized the change. Claimant believed she was within policy guidelines, since she did not know this person and they were the authorized party on the account. Claimant testified the employer told her that this party should have called the phone number to make the requested change, versus verbally confirming the request.

This policy was not located in the employee handbook. Employer has an employee handbook, which was provided to claimant via a virtual link. Claimant was never given a hard copy.

Employer sent communication on December 14, 2021 that they were not going to participate in the hearing and they had nothing to submit beyond what was submitted via SIDES.

Claimant twice disciplined regarding her not timely returning from her breaks. A verbal warning on July 2, 2021 and a Letter of Expectation on August 25, 2021. While referenced in the termination letter, nothing is stated whether the employer considered them in their decision.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits:
>
> 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 individual shall be disqualified for benefits 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.

871 IAC 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.

Iowa Admin. Code r. 871-24.1 provides:

> Definitions.
>
> Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.
>
> 24.1(113) *Separations.* All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
>
> c. *Discharge.* A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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 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).

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. 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.

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.

To the extent that the circumstances surrounding each accident were not similar enough to establish a pattern of misbehavior, the employer has only shown that claimant was negligent. "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). Ordinary negligence is all that is proven here.

The July 22, 2021 and August 10, 2021 incidents policy violations that were trained on and not employee handbook matters. The employer has failed to prove how the incidents violate the the policy and how the policy violation violates the employee handbook on conflicts of interest and do the right thing in light of claimant's explanation of the incidents. Furthermore, the termination was on September 15, 2021. The termination is 55 and 36 days after the incidents. If going by the date employer found out, August 27, 2021, termination is 19 days later. Employer provides no explanation as for the delay in time. There is no current act.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need 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 employer has failed to prove they had previously warned claimant about any issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

Claimant was not warned of her conduct. No intentional misconduct has been established, as is the employer's burden of proof. No final act was proven, as to what claimant is alleged to have done at or very near the date of separation to warrant employer discharging claimant.

While the employer may have had good reasons to let claimant go, there was no disqualify reason proven and no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

DECISION:

The October 20, 2021, (reference 01) unemployment insurance decision denying benefits is **REVERSED**. Claimant was discharged from employment on for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Darrin T. Hamilton
Administrative Law Judge

January 19, 2022
Decision Dated and Mailed

dh/mh