

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VALORIE WALKER
Claimant

APPEAL 20A-UI-12089-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SEQUEL YOUTH SERVICES OF
WOODWARD**
Employer

**OC: 06/14/20
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

On October 1, 2020, Sequel Youth Services of Woodward (employer/appellant) filed an appeal from the September 22, 2020 (reference 02) unemployment insurance decision that allowed unemployment insurance benefits based on a finding claimant was dismissed from work on June 8, 2020 with no showing of misconduct.

A telephone hearing was held on November 24, 2020. The parties were properly notified of the hearing. Employer participated by HR Director Marcia Dodds. Valorie Walker (claimant/respondent) participated personally.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

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

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 youth counselor. Claimant's first day of employment was March 26, 2020. The last day claimant worked on the job was June 5, 2020. Claimant's immediate supervisor was Darryl Stewart. Claimant separated from employment on June 8, 2020. Claimant was discharged on that date.

Claimant was discharged for hugging a student on the evening of June 5, 2020 and failing to inform a supervisor about it. The student asked claimant for a hug and claimant obliged. The student then began blowing kisses at claimant and asking inappropriate questions. Claimant told the student to stop and to go to sleep. Employer learned of the incident from another student.

Employer has a policy generally prohibiting any physical contact with students. This policy is contained in employer's handbook and is covered during training. The policy does not explicitly prohibit hugging. Claimant had not yet undergone formal training at the time of the incident. Claimant had not yet closely reviewed the handbook, as she expected it would be covered during the formal training. She had witnessed other staff touching students in an affectionate manner, like roughhousing or putting an arm around a student. Claimant had not previously engaged in similar conduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the September 22, 2020 (reference 02) unemployment insurance decision that allowed unemployment insurance benefits based on a finding claimant was dismissed from work on June 8, 2020 with no showing of misconduct is AFFIRMED.

- 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.

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 claimant's conduct was prohibited, she was unaware it was prohibited. This is because she had witnessed other staff behaving similarly and had not yet been formally trained. Notably, claimant did not continue to interact with the student after the hug and advised the student to discontinue the subsequent behavior and go to sleep.

While employer's policy prohibiting physical contact is certainly reasonable and claimant perhaps should have known without formal training that physical contact with students was not appropriate, her conduct here is best characterized as a single, good faith error in judgment or discretion rather than substantial job-related misconduct. The separation from employment was therefore not disqualifying and claimant is eligible for benefits, provided she meets all other eligibility requirements.

DECISION:

The September 22, 2020 (reference 02) unemployment insurance decision that allowed unemployment insurance benefits based on a finding claimant was dismissed from work on June 8, 2020 with no showing of misconduct is AFFIRMED. Claimant is eligible for benefits, provided she meets all other eligibility requirements.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

December 7, 2020
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 currently 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>.