

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RYAN PAYNE**  
Claimant

**BENTON BUILDING CENTER INC**  
Employer

**APPEAL 21A-UI-10035-AD-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Respondent (1)**

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Iowa Admin. Code r. 871-24.32(1)A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On April 1, 2021, Benton Building Center, Inc. (employer/appellant) filed an appeal from the March 25, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on February 10, 2021 without a showing of misconduct.

A telephone hearing was held on June 24, 2021. The parties were properly notified of the hearing. Employer participated by partner Erick Jensen. Ryan Payne (claimant/respondent) participated personally. 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's first day of employment was September 10, 2018. The last day claimant worked on the job was February 10, 2021. Claimant left work early on that date after his fiancée called him. His fiancée was distraught and relayed to him that her father was in the ICU in Las Vegas, NV. Claimant left at that time to be with his fiancée and make arrangements to travel to Las Vegas the following day to be with her father.

Claimant did not inform employer directly that he was leaving early that day and would be traveling out of state for those reasons. He did not inform employer directly because he was preoccupied with the emergency involving his fiancée's father. However, he did relay what was going on to his father, who also worked for employer, and asked his father to let the employer know. His father did relay that information to employer.

Almost immediately upon arriving in Las Vegas, claimant and his fiancée were in a serious car accident that left them hospitalized. Claimant kept employer apprised of his status during that

time through his father and through numerous direct communications with Mr. Jensen. Because of his injuries, claimant was unable to initially give employer a date certain for his return to work.

Claimant was ultimately able to return to Iowa on February 23, 2021. He appeared for work at that time but was still injured and unable to work at that time. Mr. Jensen discharged claimant on or about that date due to frustrations with his communications and because he was unable to perform work.

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

For the reasons set forth below, the March 25, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on February 10, 2021 without a 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.

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 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). Benefits are therefore allowed, provided claimant is not otherwise disqualified or ineligible.

Being unable to perform work due to injury does not constitute disqualifying misconduct. And while claimant would have been well-advised to initially communicate with employer directly rather than through his father, this is best described as an isolated error in judgement rather than substantial misconduct. This is particularly true given the emergency circumstances claimant was in.

Because benefits are allowed, the other issues noticed need not be addressed.

#### **DECISION:**

The March 25, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on February 10, 2021 without a showing of misconduct is AFFIRMED. Benefits are therefore allowed, provided claimant is not otherwise disqualified or ineligible.



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Andrew B. Duffelmeyer  
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July 06, 2021  
Decision Dated and Mailed

abd/ol