

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENACI M DILLON
Claimant

TRI CITY FOODS OF IOWA LLC
Employer

APPEAL 22A-UI-04621-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/09/22
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On February 14, 2022, Tri City Foods of Iowa LLC (employer/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated February 7, 2022 (reference 01) that allowed unemployment insurance benefits based on a finding that claimant was dismissed from work on January 8, 2022 without a showing of misconduct.

A telephone hearing was held on March 24, 2022. The parties were properly notified of the hearing. Employer participated by HR Assistant Lisa Vacek. Appearing as witnesses were District Manager Chad Anthony and General Manager Tonya Burks. Jenaci Dillon (claimant/respondent) did not appear or participate.

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?
- II. Was the claimant overpaid benefits? Should claimant repay benefits or should 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’s first day of employment was July 13, 2021. Claimant was hired as a part-time crew member. Claimant’s immediate supervisor was Ms. Burks. The last day claimant worked on the job was December 30, 2021. Claimant was discharged on that date.

Claimant was discharged due to an incident on the last day worked in which claimant repeatedly used profanity toward Ms. Burks, refused to follow her directions, and finally assaulted her before Ms. Burks was able to remove her from the premises and lock the doors.

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

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated February 7, 2022 (reference 01) that allowed unemployment insurance benefits based on a finding that claimant was dismissed from work on January 8, 2022 without a showing of misconduct is REVERSED.

- 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).

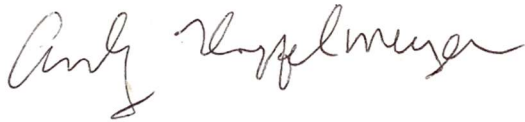
Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions “liberally to carry out its humane and beneficial purpose.” *Bridgestone/Firestone, Inc. v. Emp’t Appeal Bd.*, 570 N.W.2d 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 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). The final incident which led to the discharge clearly constitutes disqualifying job-related misconduct.

Claimant has not received unemployment insurance benefits since the date of separation and therefore the issues of overpayment and employer participation need not be addressed. Employer’s account shall not be charged for future benefits paid.

DECISION:

The decision dated February 7, 2022 (reference 01) that allowed unemployment insurance benefits based on a finding that claimant was dismissed from work on January 8, 2022 without a showing of misconduct is REVERSED. The December 30, 2021 separation from employment was disqualifying. Benefits are denied from that date and continuing until claimant earns wages for insured work equal to ten times her weekly benefit amount, provided she is not otherwise disqualified or ineligible at that time. Employer's account shall not be charged.



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

March 31, 2022
Decision Dated and Mailed

abd/abd