

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA S WYATT

Claimant

APPEAL 21A-UI-01711-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

OC: 09/13/20

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On December 17, 2020, Angela Wyatt (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated December 15, 2020 (reference 01) that denied benefits based on a finding claimant was discharged from work on September 18, 2020 for violation of a known company rule.

A telephone hearing was held on March 9, 2021. The parties were properly notified of the hearing. The claimant participated personally and was represented by attorney Laura Schultes. Casey's Marketing Company (employer/respondent) participated by District Supervisor Sarah Wright.

Employer's exhibits 1-4 were admitted. Claimant's exhibits 1-4 were admitted. Official notice was taken of the administrative record.

ISSUES:

- I. Was the separation from employment 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 July 1, 2012. Claimant worked for employer as a full-time store manager. The last day claimant worked on the job was September 18, 2020. Claimant's immediate supervisor was Wright. Wright became claimant's supervisor on July 1, 2020. Claimant was discharged by Wright on September 18, 2020.

Claimant was discharged for eating a \$.99 hash brown from the store on September 15, 2020 without paying for it. Wright learned of this incident when she was reviewing store video. A coworker brought claimant the hash brown from the kitchen area and gave it to claimant. Claimant did not request the coworker bring the hash brown to her. Wright confirmed from watching the video and reviewing receipts that neither claimant nor the coworker paid for the item that day. Claimant was immediately discharged at that time.

Claimant had not been previously warned for the same or similar incidents. Claimant did consume other food items on that date and did pay for those at the end of her shift. Claimant had paid for food items she consumed on her shifts on numerous prior occasions. Claimant did not intend to consume the hash brown without employer being compensated for it. Claimant assumed the coworker had or was going to pay for the hash brown, as it was common practice for claimant and the coworker to buy food items for each other. However, claimant did not confirm with the coworker who was going to pay for the item.

Employer's policy requires employees to pay for merchandise prior to consuming it. However, employees at the store did not follow the policy. There is no indication other employees were disciplined for failing to follow the policy.

Claimant argued that her discharge was due at least in part to her physical impairments. The administrative law judge makes no finding as to whether claimant's impairments contributed to employer's decision to discharge her, as such a finding is not necessary to determine whether the separation from employment was disqualifying.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated December 15, 2020 (reference 01) that denied benefits based on a finding claimant was discharged from work on September 18, 2020 for violation of a known company rule is REVERSED.

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.*

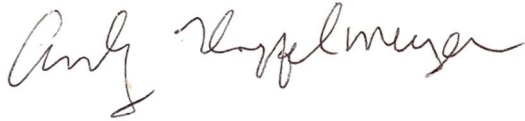
When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific 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). Claimant was discharged because she did not pay for the hash brown she consumed. This was due to a misunderstanding about whether the coworker had or was going to pay for it. Claimant should have confirmed with the coworker whether she had or was going to pay for it or whether claimant should pay for it but failed to do so. Misunderstandings of this nature are largely why employer's policy regarding paying for food items prior to consuming them is in place. However, that policy clearly was not uniformly followed or enforced at the store and claimant had never been disciplined for the same or similar conduct. As such, claimant's conduct here is best characterized as ordinary negligence in an isolated instance or a good faith error in judgment or discretion, which is not deemed misconduct within the meaning of the statute. Benefits are therefore allowed, provided she is otherwise eligible.

DECISION:

The decision dated December 15, 2020 (reference 01) that denied benefits based on a finding claimant was discharged from work on September 18, 2020 for violation of a known company rule is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible.



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March 16, 2021

Decision Dated and Mailed

abd/kmj