

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DALE C TURNER

Claimant

APPEAL 20A-UI-06269-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 03/29/20

Claimant: Respondent (1)

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

Iowa Code section 96.5(11) – Incarceration Disqualification

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the June 9, 2020 (reference 11) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2020. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Clint Martin, franchise owner.

The administrative law judge took official notice of the administrative records. Employer Exhibits 1-5 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer’s account be waived?

Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant last worked on assignment on October 13, 2019. The employer stated the claimant failed to properly report his absences on October 14, 15, 20, and 21, 2019 by notifying the employer he would be absent, two hours prior to his shift start. The employer has a policy

which provides three no call/no shows is job abandonment. The claimant was trained on the employer policy.

The employer stated the claimant was arrested. The employer didn't know when the claimant was arrested, where he was arrested, why he was arrested or the disposition of the charges. He reportedly contacted the employer on October 22, 2019 and learned he had been terminated, according to Mr. Martin. The employer stated no one called on the claimant's behalf to report his absences. At the fact-finding interview, the claimant denied ever being arrested. The employer did not participate in the fact-finding interview.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,132.00, since filing a claim with an effective date of March 29, 2020.

The claimant also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). Claimant received \$2,400.00 in federal benefits.

The administrative record also establishes that the employer did not participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

Iowa Code section 96.5(11)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

11. *Incarceration –disqualified.*

a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds all of the following:

(1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.

(3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.

(4) The employer rejected the individual's offer of services.

b. A disqualification under this subsection 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.

In this case, the employer stated the claimant's separation due to his incarceration, which led him to be a no call/no show. The claimant denied being arrested at the fact-finding interview and the employer had no available details regarding the claimant's arrest.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The employer failed to provide sufficient evidence or details to corroborate its allegation of misconduct. The employer could not identify any details of the arrest or charges, or proof that the claimant was arrested. Even in the absence of the claimant at the hearing, the administrative law judge found the claimant's statement at the fact-finding interview to be more credible than the employer.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.

The final issue to address is whether the claimant is eligible for Federal Pandemic Unemployment Compensation (FPUC).

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because the claimant is allowed regular unemployment insurance benefits, he is also eligible for FPUC, provided he is otherwise eligible. The employer is not charged for these federal benefits.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The June 9, 2020, (reference 11) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. He is not overpaid benefits. The employer's account cannot be relieved of charges associated with the claim for regular unemployment insurance benefits. The claimant is also eligible for FPUC, provided he is otherwise eligible.



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July 31, 2020
Decision Dated and Mailed

jlb/scn