

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MIKE D WYSE**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 22A-UI-03536-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/19/21  
Claimant: Appellant (2)**

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Iowa Code §96.5(2)a - Discharge/Misconduct  
Iowa Code §96.5(1) - Voluntary Quit

**STATEMENT OF THE CASE:**

On January 24, 2022, the claimant/appellant filed an appeal from the January 20, 2022, (reference 01) unemployment insurance decision that denied benefits based on claimant quitting for voluntary reasons. The parties were properly notified about the hearing. A telephone hearing was held on March 11, 2022. Claimant participated. Employer did not call in to participate. Administrative notice was taken of claimant's unemployment insurance benefits records.

**ISSUE:**

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 began working for employer on March 21, 2017. Claimant last worked full-time in building maintenance and as the chemical coordinator. Claimant was separated from employment on November 1, 2021, when he was discharged.

The employer implemented a policy where employees were required to get the COVID vaccine by November 1, 2021. Any employee that did not get a COVID vaccine by November 1, 2021, would be terminated. Claimant has a health condition and notified employer he would not be able to get the COVID vaccine. The employer informed claimant if he did not receive the COVID vaccine by November 1, 2021, he would no longer be allowed to work for the employer.

Claimant did not receive the COVID vaccine by November 1, 2021. The employer contacted claimant and notified him that he could pick up his final check.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the administrative law judge finds claimant did not voluntarily quit but was discharged by the employer. Claimant is allowed benefits.

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.

Iowa Code § 96.5A provides:

Refusal of COVID-19 vaccination – no disqualification

3. Notwithstanding any other provision of this chapter to the contrary, an individual who is discharged from employment for refusing to receive a vaccination against COVID-19, as defined in section 686D.2, shall not be disqualified for benefits on account of such discharge.

On October 29, 2021, Gov. Reynolds signed into law House File 902, which among other things amended Iowa Code Chapter 96 to include a new section 96.5A. Section 5 of House File 902 provided that the act would take effect upon enactment.

Iowa Code § 96.7(12) provides:

Discharge for refusal of COVID-19 vaccination – effect on experience and rating limitation on actions.

If an employee is discharged from employment for refusing to receive a vaccination against COVID-19, as defined in section 686D.2, the contribution rate and unemployment experience of any employer employing the employee or an employer that previously employed the employee other than the employer that so discharged the employee, shall be unaffected by such discharge. The department shall not impose any penalty on, or take any other action otherwise permitted under this chapter against, any employer employing the employee, or an employer that previously employed the employee other than the employer that so discharged the employee, as a result of such discharge.

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).

In this case, the claimant did not have the option to continue working for the employer. Claimant was prohibited from returning to work because he did not get a COVID vaccine. As a result of his refusal to get a COVID vaccine he was discharged. Since claimant was discharged, the employer has the burden to establish the discharged was due to job related misconduct in order to disqualify claimant from receiving benefits. The employer did not appear for the hearing and present evidence establishing job-related misconduct that disqualifies claimant from benefits. Claimant testified he was not allowed to continuing working for the employer because he did not get the COVID vaccine. Under Iowa Code § 96.5A this is not disqualifying misconduct. As a result, benefits are allowed.

**DECISION:**

The decision dated January 20, 2022 (reference 01) that disqualified claimant from receiving unemployment insurance benefits is REVERSED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits withheld on this basis shall be paid. Employer account 00315825 is the only account that shall be charged.



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Carly Smith  
Administrative Law Judge

March 24, 2022  
Decision Dated and Mailed

cs/kmj