

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLY J SCOTT
Claimant

ADEL HEALTHCARE MANAGEMENT LLC
Employer

APPEAL 24A-UI-04269-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/24/24
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On May 1, 2024, the claimant/appellant filed an appeal from the April 24, 2024, (reference 05) unemployment insurance decision that denied benefits based on claimant being discharged on March 22, 2024 for insubordination in connection with your work. The parties were properly notified about the hearing. A telephone hearing was held on May 15, 2024. The claimant participated. The claimant's witness Luanna Hollingsworth was present as a witness. The employer participated through Cody Petrich.

ISSUES:

- 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 began working for employer on March 13, 2023. Claimant last worked as a full-time housekeeping assistant and dietary aide.

In January 2024, the claimant submitted her resignation. The employer accepted the resignation and filled her position as a housekeeping assistant. The claimant withdrew her resignation. The employer informed the claimant that they had filled the position but they would allow her to work part-time in housekeeping and she could get the remainder of her hours as a dietary aide so she could receive full-time hours. The claimant agreed to this dual role. This resulted in the claimant working Sundays, Tuesdays, and Wednesdays in housekeeping and Thursdays, Fridays, and Saturdays in dietary. The claimant agreed to work every Friday in dietary. The claimant's schedule gave her two weekends off a month. Typically the schedule comes out one week before the start of the new month.

On March 5, 2024 the claimant was placed on a personal improvement plan (PIP) for refusing to do tasks, continuing to mention that she was going to quit, and refusing to work days assigned

by supervisors. The claimant was put on notice that any further incidents would result in her termination.

The March 2024 schedule for claimant's dietary role was not completed during the month of February and a partial schedule was released. The claimant was scheduled to work Sunday, March 17th but the claimant did not work due to illness. The claimant took pre-approved paid time off on March 18th. The claimant was not scheduled to work March 19th. On March 20th the claimant did not work due to illness. That day she took a medical note to her supervisor for her illness. When the claimant took the note to the employer the schedule for dietary was still not complete for the month of March.

On March 21st the claimant worked for a while but then went home because she was not feeling well. While claimant was working on March 21st the claimant noticed that she was put on the schedule for Saturday, March 23rd. The claimant was put on the schedule because the employer did not have anyone else to work the shift.

The claimant informed her supervisor and Mr. Petrich that she would not be working March 23rd because her grandkids were coming into town. The claimant did not request the day off. The new schedule required the claimant to work three weekends in a row (the weekend of March 16th and 17th, 23rd and 24th, and 30th and 31st). The employer has a policy that if the claimant cannot work their shift they are required to find someone to cover their shift. The claimant did not attempt to find someone to cover her shift. The claimant was not aware of the policy.

On March 22, 2024 at 11:28 a.m. the claimant text Mr. Petrich about the situation. Mr. Petrich responded: "You agreed to pick the shift up. You will have to talk to Steph." The claimant disputes that she voluntarily agreed to take the shift. Mr. Petrich called the claimant to discuss the situation. The claimant became upset with the situation because she did not voluntarily pick up the shift and refused to work on the 23rd. Due to the claimant's refusal to work, her attendance issues, as well as her causing drama within the building, Mr. Petrich determined he was separating the claimant from employment. During the phone call Mr. Petrich informed the claimant that her services were no longer needed and she did not need to work her shift on March 22nd. The employer discharged the claimant on March 22, 2024.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a and d provide:

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.

d. For the purposes of this subsection, “*misconduct*” means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee’s contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

- (1) Material falsification of the individual’s employment application.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer’s property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer or a combination of such substances, on the employer’s premises in violation of the employer’s employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer’s premises in violation of the employer’s employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual’s regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer or coworker’s funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating the 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). The focus is on deliberate, intentional, or culpable acts by the employee.

Insubordination is not misconduct if it is reasonable under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. *Woods v. Iowa Dep't of Job Serv.*, 327 N.W.2d 768, 771 (Iowa 1982).

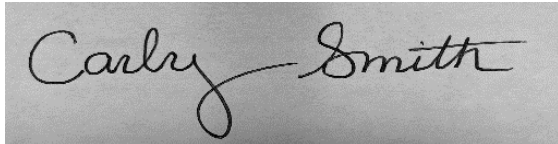
In an insubordination case the focus is on the reasons for giving the directive and the reasons for ignoring the directive. If the directive is reasonable and outweighs the reason for refusal, that is misconduct. Good faith under this standard is not determined by the Claimant's subjective understanding. Good faith is measured by an objective standard of reasonableness. "The key question is what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); *accord O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993)(objective good faith is test in quits for good cause).

In this case, the employer set the schedule and required the claimant to work March 23rd because they did not have someone to cover the shift. The employer contends that the claimant voluntarily agreed to work the shift, the claimant denies that she volunteered to work the shift. Regardless of whether the claimant volunteered to work the shift or not, the employer set the schedule and required the claimant to work. The claimant had at least a two day notice that she would be required to work. The claimant informed the employer she would not be working and became upset when the employer mandated that she worked. The claimant's continued refusal to work was not for good cause and is insubordination. The claimant was also put on notice in the March 5, 2024 PIP that any further refusal to work days assigned for her to

work would result in her discharge. As a result, the employer has met their burden establishing job-related misconduct. Benefits are denied.

DECISION:

The April 24, 2024 (reference 05) unemployment insurance decision is AFFIRMED. The claimant was discharged on March 22, 2024 for job-related misconduct. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and been paid wages for insured work equal to ten times their weekly benefit amount after March 22, 2024, and provided they are otherwise eligible.

A rectangular box containing a handwritten signature in cursive script that reads "Carly Smith".

Carly Smith
Administrative Law Judge

May 16, 2024
Decision Dated and Mailed

cs/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.