

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIANA N GOKEN
Claimant

KWIK TRIP INC
Employer

APPEAL 20R-UI-05526-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/01/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
PL 116-136, Sec. 2014(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On March 26, 2020, Briana Goken (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated March 23, 2020 (reference 01) that denied benefits.

A telephone hearing was set for April 28, 2020. Claimant failed to register a number for the hearing and a default order was issued. Claimant appealed to the Employment Appeal Board. The EAB remanded the case for a new hearing.

A telephone hearing was held on July 10, 2020. The parties were properly notified of the hearing. The claimant participated personally. Kwik Trip Inc. (employer/respondent) participated by Assistant Store Leader Dave McRoberts.

Employer's Exhibits 1-5 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?
- II. Was the claimant overpaid benefits?
- III. 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:

Claimant worked for employer as a part-time guest service employee. Claimant's first day of employment was June 26, 2018. Claimant's immediate supervisor was Store Leader Melissa Powers-Cruz. Claimant was discharged by Powers-Cruz on March 5, 2020.

The final incident leading to discharge occurred on February 29, 2020. On that date, a coworker came in to start her shift. Claimant was working at the time. The coworker was aggressive with claimant, saying to her, "what the fuck did you get done today, you didn't get anything done yesterday." Claimant told the coworker "don't come in here bitching." The coworker then approached claimant and put her finger in claimant's face. Claimant put her hands up to protect herself. The coworker then hit claimant in the face with her hand, causing claimant's glasses to come off. Another employee then restrained the coworker and claimant put her glasses on and called Powers-Cruz to report what had happened. Claimant said something to the other employee along the lines of "I can't believe she did that bullshit." When claimant could not reach Powers-Cruz, she called the police. The police reviewed surveillance tape of the incident with claimant, which showed the coworker assaulting claimant. The coworker was charged with assault.

Claimant was discharged for using a raised voice and profanity with a coworker and in the presence of a customer. This violated employer's code of conduct. Claimant had no previous incidents of this nature. Employer did not provide video of the incident as evidence for the hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated March 23, 2020 (reference 01) that found claimant is disqualified from receiving unemployment insurance benefits is REVERSED. Claimant is allowed benefits, provided she is otherwise eligible.

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). The administrative law judge found claimant's first-hand testimony of the events leading to her discharge to be more reliable than the testimony provided by McRoberts, which was not first hand. The administrative law judge finds employer's failure to provide the video of the incident to be relevant. This video evidence would have almost certainly settled the factual disputes at play. Employer's failure to provide the video leads the administrative law judge to believe the video may not have been favorable to employer. In the absence of the video, claimant's credible, first-hand testimony is the best evidence available.

While the administrative law judge does find claimant swore and used an elevated voice, this is certainly understandable given she was the victim of an assault by a coworker and her comments were in the heat of the moment. This language was not directed at a customer and there were no previous incidents of a similar nature. This does not rise to the level of substantial job-related misconduct such that claimant is disqualified from benefits.

DECISION:

The decision dated March 23, 2020 (reference 01) that found claimant is disqualified from receiving unemployment insurance benefits is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account is subject to charge.



Andrew B. Duffelmeyer
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July 20, 2020
Decision Dated and Mailed

abd/scn