

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**HALLIE M LITTON**  
Claimant

**APPEAL NO. 22A-UI-04438-B2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JIM WILLIAMS PAINTING CO**  
Employer

**OC: 02/14/21**  
**Claimant: Appellant (2)**

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Iowa Code § 96.6-2 – Timeliness of Appeal  
Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the February 2, 2022, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on March 22, 2022. The claimant did participate. The employer did participate through Jim Williams and Carolyn Williams. Claimant's exhibit A was admitted to the record.

**ISSUES:**

Whether the appeal is timely?

Whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on February 2, 2022. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 11, 2022. The appeal was not filed until February 12, 2022, which is after the date noticed on the disqualification decision. Therefore, the appeal was timely filed.

Claimant last worked for employer on December 16, 2021.

Employer discharged claimant on December 31, 2021 because claimant did not have a ride to get herself to and from work. Throughout the time that claimant worked for employer she did not have a driver's license. Claimant started out getting a ride to painting jobs from her friend, but once the friend no longer worked for employer, claimant began to either take a bus to meet employer at a central location, or employer would pick claimant up for work at her residence.

On numerous occasions employer asked claimant to get a driver's license. Employer did not warn claimant that she would no longer have a job if she did not get a license. Employer did decide on December 31, 2021 that claimant would be terminated from her job as employer no longer wanted to pick claimant up for work.

Employer stated that claimant did no last, most recent misdeed to bring about her termination; rather employer did not wish to continue to go out of his way on a daily basis to get claimant when she would not go through the steps to get her license back.

### **REASONING AND CONCLUSIONS OF LAW:**

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(1)a provides:

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

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, 462 N.W.2d at 737](#). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct

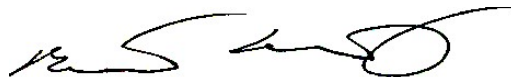
may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane 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 \(Iowa Ct. App. 1991\)](#).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning not getting rides to work from employer. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant did not have a driver's license throughout her tenure. Her situation did not change. Employer changed in that he no longer wished to pick up claimant, which is understandable, but does not turn claimant's actions into misconduct. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated February 2, 2022, reference 02, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



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Blair A. Bennett  
Administrative Law Judge

March 31, 2022  
Decision Dated and Mailed

bab/kmj