

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIKA B BAIG
Claimant

APPEAL 21A-UI-15959-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KOHL'S DEPARTMENT STORES INC
Employer

**OC: 04/18/21
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On July 20, 2021, Erika Baig (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated July 16, 2021 (reference 02) that found claimant disqualified from receiving unemployment insurance benefits based on a finding she voluntarily quit work on August 27, 2020.

A telephone hearing was held on September 7, 2021. The parties were properly notified of the hearing. The claimant participated personally. Kohl's Department Stores Inc. (employer/respondent) participated by Store Manager Dallas Nelson and was represented by Hearing Rep. Karel Clark.

Claimant's Exhibits 1-3 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation from employment 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 worked for employer as a sales supervisor. Claimant's first day of employment was September 6, 2019. Claimant's immediate supervisor was Nelson. The last day claimant worked on the job was on or about June 23, 2020. Claimant began a leave of absence at that time. Claimant was working with a third-party leave administrator, Sedgwick, during that time. Every 30 days Sedgwick would contact claimant via text message to inquire as to her anticipated return date.

Claimant responded immediately when contacted on August 17, 2020 that her expected return date was September 24, 2020. She received no indication from Sedgwick or employer as to whether her leave would be extended to date or whether she was expected to return. Employer scheduled claimant to work on August 25 and 26, 2020, without notifying her of her scheduling.

Claimant did not appear for work on those dates or call to report her absence because she was unaware she had been scheduled and believed she was still on leave. Employer made no effort to contact claimant when she did not appear on those dates and instead simply sent her a termination letter based on its two-day no call, no show policy. Claimant contacted employer upon receiving the termination letter and explained the situation. However, employer refused to rescind the termination. Claimant had no intention of resigning.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated July 16, 2021 (reference 02) that found claimant disqualified from receiving unemployment insurance benefits based on a finding she voluntarily quit work on August 27, 2020 is REVERSED. Claimant did not resign but was discharged. Employer has not established the discharge was due to misconduct. Benefits are therefore allowed, provided claimant is not otherwise disqualified or ineligible.

In this case, the claimant did not have the option of remaining employed nor did she express intent to terminate the employment relationship. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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). Claimant reasonably believed she was still on leave and had no idea she was scheduled to work on the days in question. Her absences on those days do not constitute disqualifying misconduct. Benefits are therefore allowed, provided she is not otherwise disqualified or ineligible.

DECISION:

The decision dated July 16, 2021 (reference 02) that found claimant disqualified from receiving unemployment insurance benefits based on a finding she voluntarily quit work on August 27, 2020 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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September 15, 2021
Decision Dated and Mailed

abd/ol