

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRUCE E CHRISTENSEN
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 22A-UI-07745-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/27/22
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On March 18, 2022, Bruce Christensen (claimant/appellant) filed a timely appeal from the Iowa Workforce Development (“IWD”) decision dated March 10, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that claimant voluntarily quit work on February 22, 2022 for personal reasons.

A telephone hearing was held on May 9, 2022. The parties were properly notified of the hearing. The claimant participated personally. Tyson Fresh Meats Inc (employer/respondent) did not appear or participate. Official notice was taken of the administrative record.

ISSUES:

- I. Was there a disqualifying separation from employment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on May 9, 2011. Claimant last performed work for employer in May 2021. Claimant was on a medical leave of absence with employer’s permission until February 2022. Claimant was released to return to work at that time and employer was preparing to return him to work. However, employer ultimately did not return claimant to work because he declined to comply with employer’s policy requiring employees be vaccinated against COVID-19.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated March 10, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that claimant voluntarily quit work on February 22, 2022 for personal reasons is REVERSED.

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.

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. The new section 96.5A provides:

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.

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).

The administrative law judge finds employer effectively discharged claimant when it declined to return him to work following the medical leave of absence. Employer declined to return claimant to work due to his declining to be vaccinated against COVID-19. The administrative law judge finds the provisions of Iowa Code 96.5A apply here and as such the separation from employment was not disqualifying.

DECISION:

The decision dated March 10, 2022 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that claimant voluntarily quit work on February 22, 2022 for personal reasons is REVERSED. Claimant is not disqualified from benefits based on the separation from employment. Benefits are allowed so long as claimant is not otherwise disqualified or ineligible. Employer's account is subject to charge.



Andrew B. Duffelmeyer
Administrative Law Judge

May 12, 2022
Decision Dated and Mailed

abd/abd