

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAYLA N CRAWFORD
Claimant

APPEAL 21A-UI-24102-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WEBSTER CITY COMMUNITY SCHOOL
DISTRICT**
Employer

**OC: 09/19/21
Claimant: Respondent (1)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 - Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant, Webster City Community School District, filed an appeal from the October 19, 2021, (reference 01) unemployment insurance decision that allowed benefits based upon finding the May 28, 2021 dismissal from work was for excessive absences were due to illness and were properly reported and therefore there was no misconduct. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for December 28, 2021. The claimant, Kayla Crawford, participated. The employer participated through Will Brock, assistant principal, and Kathy Biere, business manager. Employer's Exhibit of 5 pages was admitted. Judicial notice was taken of the administrative filed.

ISSUE:

Was the separation a layoff, discharge for misconduct or a voluntary quit without good cause?
Was the claimant overpaid benefits?
Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant was employed full-time, with a varied schedule, as a para-educator, starting February 11, 2015 through her last day worked on May 27, 2021. Claimant was discharged from employment on August 28, 2021, when her contract was not renewed, for refusing to accept the reasonable accommodations offered by employer to employee for employer's belief of what reasonable accommodations would work for claimant and because claimant did not submit doctor notes for 26 of her absences. It is noted the reasons offered are not different from excessive absences.

Employer has an employee handbook provided to claimant at the start of each contract year. Claimant had absences. The absences were properly called in, except for the final incident, wherein claimant did not realize it was a scheduled day. Claimant submitted some doctor notes, with one being from a specialist that globally covered what was taking place. Employer wanted a doctor note for every single missed date.

Claimant received \$402.00 total in benefits, divided evenly for the week ending 09/25/21 and for the week ending 11/06/21. Employer submitted documents in fact finding, but did not participate in the fact finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

Iowa Admin. Code r. 871-24.1(113)c provides:

Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

c. *Discharge*. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (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 of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Claimant knew of the policies/rules. Claimant provided doctor notes. One of the notes was from her specialist that is over a few hours away that was to globally cover her absences. Employer wanted it detailed and to be after every day of absence. When terminating claimant for the absences was unsuccessful, employer has slightly shifted the reason to no doctor notes for every date missed. Notes were provided, just not as many as employer wanted.

The American with Disabilities Act (ADA) requires in part that if an employee can perform the major functions of the job with the employer providing reasonable accommodations, the employer is to provide said reasonable accommodations. Here, employer offered reasonable accommodations that claimant did not request, not desire, and because claimant refused them, the employer did not renew her contract. While the employer may (or may not) have had good reason(s) to terminate claimant, they did not have a disqualifying reason and no disqualification will be imposed. The remaining issues of overpayment of benefits, repayment of benefits and whether to charge employer's account are moot.

DECISION:

The October 19, 2021, (reference 01) unemployment insurance decision is **AFFIRMED**. Claimant was discharged for no disqualifying reason. The remaining issues of overpayment of benefits, repayment of benefits and whether to charge employer's account are moot.



Darrin T. Hamilton
Administrative Law Judge

January 27, 2022
Decision Dated and Mailed

dh/kmj

Note to Employer:

Employer provided updated address information during the hearing. That corrected address dealt with the attention line and is noted on the first page of this decision. Employer is directed to contact IWD customer service at 1-866-239-0843 as soon as possible to update their contact information so that their information can be updated within our systems and not just on this one printed decision.