

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MAYA R. COLEMAN
Claimant

APPEAL 22A-UI-04472-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SEQUEL YOUTH SERVICES OF
WOODWARD**
Employer

**OC: 12/12/21
Claimant: Respondent (2)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
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:

On February 10, 2022, the employer/appellant filed an appeal from the February 1, 2022, (reference 02) unemployment insurance decision that allowed benefits based on claimant being discharged but there was no evidence of willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on March 23, 2022. Claimant participated. Employer participated through Human Resources Coordinator, Ronice Payne. Habilitation Program Director, Jake Atkins, testified as a witness for the employer. Exhibit 2 was admitted into the record. Exhibit 1 was offered but was not admitted into the record due to it being an outside agency finding. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Should claimant repay benefits?
- III. Should the employer be charged due to employer participation in fact finding?
- IV. Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 13, 2018. Claimant last worked as a full-time Direct Support Staff member. Claimant would provide support to clients that lived in a group home. Claimant last performed work for the employer on December 3, 2021. Claimant was put on

administrative leave due to an investigation into misconduct by the claimant. Claimant was separated from employment on January 11, 2022, when she was discharged.

The employer has a policy that requires staff members to pass a background check in order to perform the duties of their job. Claimant's duties required her to take care of clients that were adult dependents. Claimant could pass the background check when she first hired. Claimant acknowledges that she was aware of this policy.

On November 28, 2021, the employer received a report from a client regarding claimant and another employee. The client accused claimant and the other employee of providing the client with a vape pen that contained THC.

The employer investigated the matter by interviewing the client, claimant, the other employee, and the client's three roommates. The client reported the other employee provided the vape pen containing THC to the client. The client reported that claimant was present in the company vehicle when the other employee provided the vape pen to the client. Claimant denies that she was present in the vehicle when the incident took place and did not know anything about it. The employer was required to mandatory report the incident to the Department of Human Services.

During the investigation the roommates reported claimant asked them to purchase items for her dog and purchase food for her. The employer also found there were issues with the medication counts when claimant worked.

In January 2022 claimant could no longer pass a background check. The employer terminated claimant for her inability to pass a background check so she could no longer perform the duties of her job.

Claimant filed for benefits with an effective date of December 12, 2021. Claimant's weekly benefit is \$396.00. Claimant received benefits beginning week ending December 18, 2021 and is continuing to file for benefits. Claimant has received benefits through March 19, 2022. Claimant has received a total of \$5,334.00 in state unemployment benefits.

The employer did not participate in a fact-finding interview with Iowa Workforce Development (IWD). Iowa Workforce Development attempted to call the phone number provided by the employer. No documents were provided to IWD prior to 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 due to job-related misconduct.

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.

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 employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant was required to pass a background check in order to perform the duties of her job. Claimant was aware of this policy. After the employer performed a background check in January 2022 claimant could no longer meet the requirements of her job and she was discharged. This is disqualifying misconduct. Benefits are denied.

Since claimant's separation was disqualifying, benefits were paid to her which she was not entitled. The administrative law judge finds claimant has been overpaid regular state unemployment benefits in the amount of \$5,334.00 for fourteen weeks ending March 19, 2022. Claimant is not required to repay the regular state unemployment benefits because the employer did not participate in the fact-finding interview.

Iowa Code section 96.3(7)a-b, as amended in 2008, provides, in pertinent part: :

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous

pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Claimant has been overpaid REGULAR UI benefits in the amount of \$5,334.00. However, since the employer did not participate in the fact-finding interview, claimant is not required to repay these benefits and the employer's account shall be charged.

DECISION:

The February 1, 2022, (reference 02) unemployment insurance decision is REVERSED. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Claimant has been overpaid unemployed insurance benefits in the amount of \$5,334.00, but claimant is not obligated to repay those benefits since the employer did not participate in the fact-finding interview. The employer's account shall be charged.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

March 24, 2022
Decision Dated and Mailed

cs/mh

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.