

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JADE J MCBROOM
Claimant

APPEAL 22A-UI-04842-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLEN MEMORIAL HOSPITAL
Employer

**OC: 01/16/22
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
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 17, 2022, Allen Memorial Hospital (employer/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated February 7, 2022 (reference 01) that allowed unemployment insurance benefits based on a finding that claimant was dismissed from work on January 10, 2022 without a showing of misconduct.

A telephone hearing was held on March 30, 2022. The parties were properly notified of the hearing. Employer participated by HR Business Partner Jill Grover. Jade McBroom (claimant/respondent) did not appear or participate.

Employer’s Exhibit 1 admitted. Official notice was taken of the administrative record.

ISSUE(S):

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

FINDINGS OF FACT:

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

Claimant’s first day of employment was March 16, 2020. Claimant worked for employer most recently as a PRN patient care technician. She began in that role in May 2021. The last day claimant was present for work was December 27, 2021. Claimant was discharged on that date.

The most recent incident leading to discharge occurred on December 10, 2021. On that date claimant left work to get food and did not clock out when she left or clock in when she returned.

She was gone approximately 30 minutes. Employer does not pay employees for lunch taken off premises and for that reason requires employees to clock out and back in if they do so.

This policy has been consistently enforced since at least July 2021, when new leadership in claimant's area was brought in and emphasized in a mandatory, all-staff meeting the importance of abiding by that policy. Minutes from that meeting were sent to claimant and other employees and the policy is set forth in the handbook employees have access to.

Claimant indicated at the time of discharge that she did not attend the mandatory meeting and did not believe the relevant policy applied to her because she was PRN. There is no such exception in the policy for employees who work PRN.

Claimant's prior absences were properly reported and were for health-related reasons. The delay in discharge was due to the need to undertake an investigation, because claimant did not work again until December 27, 2021, and because employer wished to notify claimant of the discharge in person.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$346.00 for a total of two weeks, the benefit weeks ending February 5 and 12, 2022. The total amount of benefits paid to date is \$692.00.

Employer did not participate in the fact-finding interview due to IWD error. IWD did not contact employer at the number listed on the Statement of Protest at the scheduled time. When employer did not receive a call it contacted IWD and was told it was too late and to appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated February 7, 2022 (reference 01) that allowed unemployment insurance benefits based on a finding that claimant was dismissed from work on January 10, 2022 without a showing of misconduct is REVERSED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

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 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). Employer put claimant on notice of the importance of the policy in question through the mandatory all-staff meeting, the minutes from that meeting, and the employee handbook.

Claimant cannot avoid accountability for employer's work rules by failing to make reasonable efforts to apprise herself of them, particularly where – as here – they were clearly communicated to her in several forms.

While the other absences were properly reported and for reasonable grounds and thus do not constitute misconduct, the administrative law judge finds claimant's leaving on December 10, 2021 without properly clocking out rises to the level of substantial, job-related misconduct by itself. Claimant violated a clear policy which employer placed her on notice of and in so doing received compensation she was not entitled to. The final incident was a current act of misconduct as the delay in discharge was reasonable in the circumstances.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 96.3(7) 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.

(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.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$346.00 for a total of two weeks, the benefit weeks ending February 5 and 12, 2022. The total amount of benefits paid to date is \$692.00. Because the administrative law judge now finds claimant was disqualified from benefits during that period she has been overpaid benefits in the amount of \$692.00.

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.

Because employer failed to participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment, benefits shall not be recovered from claimant. However, neither shall employer be charged for benefits paid, as its failure to participate was due to no fault of its own. The overpayment shall instead be absorbed by the unemployment insurance compensation fund.

DECISION:

The decision dated February 7, 2022 (reference 01) that allowed unemployment insurance benefits based on a finding that claimant was dismissed from work on January 10, 2022 without a showing of misconduct is REVERSED. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.

Claimant was overpaid benefits in the amount of \$692.00. However, for the reasons set forth above, benefits shall not be recovered and employer's account shall not be charged. The overpayment shall instead be absorbed by the unemployment insurance compensation fund.



Andrew B. Duffelmeyer
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April 5, 2022
Decision Dated and Mailed

abd/jh