

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BERTHA B AMENT
Claimant

APPEAL 19A-UI-05691-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

**OC: 06/09/19
Claimant: Respondent (1-R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work
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 July 17, 2019, Hillcrest Family Services (employer) filed an appeal from the July 9, 2019, reference 03, unemployment insurance decision that allowed benefits based upon the determination Bertha B. Ament (claimant) was separated from employment due to a staff reduction or elimination of position. The parties were properly notified about the hearing. A telephone hearing was held on August 8, 2019 and consolidated with the hearing for appeal 19A-UI-05702-SC-T. The claimant and her former co-worker, Janet Conlan, participated. The employer participated through President/CEO Julie Heiderscheit. The Claimant's Exhibits A and B and the Employer's Exhibit 1 were admitted without objection.

ISSUES:

Was the claimant laid off due to a lack of work, did the claimant voluntarily leave the employment with good cause attributable to the employer, or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Teachers Associate beginning on January 23, 2003, and her last day worked was June 10, 2019. The employer had subcontracted for years with Dubuque Community School Districts (DCSD) pursuant to an agreement under Iowa Code section 28E to operate a special education program on its campus. The employer was responsible for employing all staff and DCSD reimbursed the employer for the expenses of running the facility. At the beginning of the 2018-2019 school year, DCSD decided it would not subcontract with the employer the following year and it would assume operation of the program.

In March 2019, all employees were given the opportunity to apply and interview for positions with DCSD. On April 2, a WARN letter was sent to the employees notifying them that they were being permanently laid off due to the loss of the contract with DCSD. The employees were given the option of applying for other positions the employer had open in other programs. On May 23, the claimant received notice of the amount of her severance pay and that her last day would be June 10.

The claimant was not offered a teaching position from this employer for the following school year and cannot have reasonable assurance with this employer. However, whether the claimant had reasonable assurance of educational employment with DCSD (account number 101899) for the 2019-2020 school year has not been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD).

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$2,135.00, since filing a claim with an effective date of June 9, 2019, for the five weeks ending July 27, 2019. The administrative record also establishes that the employer did not participate in the fact-finding interview. It did not make a first-hand witness available for rebuttal or provide written documentation that, without rebuttal, would have resulted in disqualification.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit but was involuntarily separated from employment for no disqualifying reason when she was laid off due to the elimination of her position. Benefits are allowed. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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).

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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *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).

In this case, the employer has not alleged that the claimant engaged in any misconduct leading to the end of her employment. The employer lost its contract with DCSD and the claimant's position was eliminated. Benefits are allowed based on this separation, provided the claimant is otherwise eligible.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

Whether the claimant had reasonable assurance of educational employment with DCSD (account number 101899) for the 2019-2020 school year is remanded to the Benefits Bureau of IWD for a fact-finding interview with notice to the claimant and DCSD and an unemployment insurance decision issued to both parties with appeal rights.

DECISION:

The July 9, 2019, reference 03, unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

REMAND:

Whether the claimant had reasonable assurance of educational employment with Dubuque Community School District (account number 101899) for the 2019-2020 school year is remanded to the Benefits Bureau of IWD for a fact-finding interview with notice to the claimant and DCSD and an unemployment insurance decision issued to both parties with appeal rights.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn