IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JENNY SMITH Claimant **COMFORT INN AND SUITES** Employer	**APPEAL 21A-UI-01212-S1-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/20/20** **Claimant: Respondent (5)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 – Overpayment
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

Comfort Inn and Suites (employer) appealed a representative's December 7, 2020, decision (reference 01) that concluded Jenny Smith (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 16, 2021. The claimant participated personally. The employer participated by Jim Burbridge, General Manager. The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, and which party should be charged for those benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 23, 2020, as a front desk agent. She worked sixteen to forty hours per week. She signed for receipt of the employer's handbook on March 23, 2020. The claimant was diagnosed with cancer and was undergoing chemotherapy while working. The treatment affected her thinking and, as a result, she made some mistakes.

The employer wanted employees to take part in at least forty to fifty hours of computer training. Mr. Burbridge did not issue the claimant a document indicating when the training was to be completed. Generally, training was done outside of work time and unpaid. Mr. Burbridge would allow some training on work time. The claimant completed parts of the training but had problems with the employer's computer. Mr. Burbridge was unable to fix the computer at the time the claimant was training. On May 6, 2020, the General Manager issued the claimant a written warning listing the computer training the claimant completed. The warning did not indicate what the claimant did wrong, the consequences for her actions, or a deadline to finish

her training. The employer issued the claimant warnings on May 9, and 12, 2020, for performance issues. The documents did not warn the claimant of any consequences.

In May 2020, the claimant started a part-time job at Fleet Farms where she worked five to ten hours per week. She could work at her new job and for the employer without a problem with scheduling.

Mr. Burbridge considered how to reduce staff in the age of the pandemic. He decided to terminate the claimant on June 4, 2020, based on her past performance and failure to complete her training. He also took into consideration that the claimant had another job.

The claimant filed for unemployment insurance benefits with an effective date of September 20, 2020. Her weekly benefit amount was determined to be $170.00. The employer protested her claim. On October 6, 2020, Jim Burbridge certified that the claimant voluntarily quit work on June 4, 2020. Mr. Burbridge participated personally in a fact-finding interview on December 4, 2020. Mr. Burbridge told the fact-finder that the business was negatively affected by Covid-19. Since, the claimant's performance was not up to the company's standards, the employer thought it was a good time to part ways. There was not work available for the claimant.

The claimant received benefits from September 20, 2020, to the week ending January 16, 2021. This is a total of $2,846.04 in state unemployment insurance benefits since September 20, 2020. She also received $4,080.00 in Federal Pandemic Unemployment Compensation since September 20, 2020, 2020. The claimant was paid $1,530.00 in Lost Wage Assistance Program funds.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

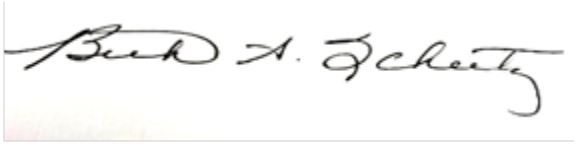
Iowa Admin. Code r.871-24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide a final incident of misconduct. The last thing the employer cited was the claimant's failure to complete her training. It also indicated the employer was allowing employees to perform work duties (the completion of training) without being paid for their time. The failure to perform unpaid work duties is never misconduct. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's December 7, 2020, decision (reference 01) is modified with no effect. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

February 26, 2021
Decision Dated and Mailed

bas/kmj