

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TAKIA M GRANT-WOODS**  
Claimant

**THE UNIVERSITY OF IOWA**  
Employer

**APPEAL 18A-UI-07337-LJ**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/10/18**  
**Claimant: Respondent (1)**

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 filed an appeal from the July 3, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer did not establish the discharge was for willful or deliberate misconduct. The parties were properly notified of the hearing. An in-person hearing was held in Cedar Rapids, Iowa, on September 20, 2018. The claimant, Takia M Grant-Woods, participated and was represented by Lorraine A. Gaynor, Attorney at Law. The employer, The University of Iowa, participated through Mary Eggenburg, Benefits Specialist; and Samantha Miller, HR Generalist. Employer's Exhibit 1 was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
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: Claimant was employed full-time, most recently as a central services tech 1, from April 20, 2015, until June 14, 2018, when she was discharged. On May 17, 2018, claimant finished her shift at work and then retrieved her car and pulled into the fountain area of the employer's property to wait for her sister. This was claimant's normal routine after she got off work. While claimant waited and talked on the phone with her mother, a member of the phlebotomy crew came up and asked claimant to move her vehicle so the blood bank vehicle could pull in. Claimant did not move her vehicle. Claimant was then approached by a second person on the phlebotomy crew and asked to move her vehicle, and again claimant did not move. Then, a security officer approached claimant and the two got into an altercation. The security officer was confrontational with

claimant, and claimant became upset by this interaction. The security officer immediately reported the incident to claimant's department.

Approximately one week after this incident, Miller and claimant's supervisor met with claimant to discuss the May 17 incident. The employer did not describe any other steps it took to investigate the incident. After meeting with claimant, Miller and claimant's supervisor made the decision to discharge claimant. This was routed through the Vice President of Human Resources. Claimant was ultimately discharged on June 14, 2018, approximately one month after the final incident occurred. Claimant was allowed to continue working between May 17 and June 14. Miller explained that she was on vacation for one week over Memorial Day, which may have caused some of the delay.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$5,880.00, since filing a claim with an effective date of June 10, 2018, for the fourteen weeks ending September 15, 2018. The administrative record also establishes that the employer did not participate in the fact-finding interview, provide the name and contact information of a rebuttal witness, 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 claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 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.

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.

A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." Where an employer gives seven days' notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011).

In this case, approximately one month passed between the final incident and the date the employer discharged claimant. Claimant was allowed to continue working, indicating her conduct was not so severe that she posed a danger to the employer. Even if Miller was on vacation and the employer was not able to take any action in her absence that does not explain the approximately two weeks of delay between her return from vacation and the end of employment. The employer has not shown that claimant was discharged from employment for a current act of misconduct. Therefore, benefits are allowed. As claimant's separation is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

#### **DECISION:**

The July 3, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn