

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LOREN A BOTTS
Claimant

BORDER FOODS OF IOWA, LLC
Employer

APPEAL 21A-UI-17991-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/06/21
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On August 16, 2021, Border Foods of Iowa, LLC (employer/appellant) filed an appeal from the August 5, 2021 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits based on a finding claimant was discharged on June 3, 2021 without a showing of misconduct.

A telephone hearing was held on October 6, 2021. The parties were properly notified of the hearing. Employer participated by Area Coach Laurie Martinez. Loren Botts (claimant/respondent) participated personally.

Employer's Exhibits 1 and 2 were 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?
- III. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

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

Claimant worked for employer as a part-time team member. Claimant's first day of employment was June 12, 2019. Claimant's immediate supervisor was GM Kelly Kurt. The last day claimant worked on the job was June 3, 2021. Claimant was discharged by Kurt on June 4, 2021.

On June 3, 2021, a coworker was rude to claimant at work. Claimant responded by asking the coworker not to speak to her that way. Kurt eventually intervened and cussed at claimant.

Claimant told Kurt she would not be spoken to that way and went outside to remove herself from the situation and to contact Martinez. Claimant was eventually able to reach Martinez and then went back in to speak with Kurt. Kurt told her to come back for her scheduled shift the following day.

When claimant appeared for the scheduled shift on June 4, 2021 Kurt presented her with numerous write-ups and told her she was terminated. Claimant tried to discuss the matter with Kurt further but was told the police would be called if she did not leave immediately. Claimant had no intention to resign.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the August 5, 2021 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits based on a finding claimant was discharged on June 3, 2021 without a showing of misconduct is AFFIRMED.

- 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 not 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). Claimant did not resign but was discharged. Employer has not carried its burden of proving the discharge was for substantial misconduct. Claimant presented credible, first-hand testimony that she did not behave inappropriately toward the coworker. The administrative law judge further finds that claimant's decision to leave during her shift in order to remove herself from the situation and to contact Martinez was reasonable in the circumstances. Benefits are therefore allowed, provided claimant is not otherwise disqualified or ineligible. Because benefits are allowed, the other issues noticed need not be addressed.

DECISION:

The August 5, 2021 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits based on a finding claimant was discharged on June 3, 2021 without a showing of misconduct is AFFIRMED.



Andrew B. Duffelmeyer
Administrative Law Judge
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October 12, 2021
Decision Dated and Mailed

abd/mh