

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BETTY J SCHMITT
Claimant

APPEAL NO: 18A-UI-07837-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HOWARD WINNESHIEK COMMUNITY
SCHOOL DISTRICT**
Employer

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

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:

The employer filed an appeal from the July 10, 2018, (reference 01), unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 14, 2018. The claimant participated personally and was represented by Eric Schmitt, attorney at law. The employer participated through Ted Ihns, superintendent. Wendy Twait, human resources manager, also testified for the employer.

Employer Exhibits 1-8 were admitted into evidence without objection. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any 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 special education associate/para-professional and was separated from employment on May 25, 2018, when she was discharged (Employer Exhibit 8).

The employer reported that the claimant was discharged for poor job performance based upon an April 2018 job evaluation, and for her failure to resign as anticipated (Ihns testimony). At the time of hire, and with each school year, the claimant received training and access to the

employer policies, including handbooks (Employer Exhibit 3, 5, 6). The claimant had no prior written warnings or performance improvement plans, but had been verbally counseled for allegedly sleeping on the job in November 2017 (Employer Exhibit 2).

The claimant was given her annual evaluation in April, 2018, which she refused to sign because she did not agree (Employer Exhibit 2). She did not follow the employer's grievance procedure of notifying Mr. Ihns within 10 days of her dispute. Rather, she was told by her manager, Terese Jurgensen, that she could not leave the room until she signed it. The claimant left the room citing to feeling harassed. Thereafter, Ms. Jurgensen repeatedly told the claimant she must resign from her position. The undisputed evidence is no further incident occurred after the April, 2018 evaluation until the claimant's separation.

Around May 18, 2018, the claimant met with human resources manager, Wendy Twait. She inquired about her benefits upon separation. She did not tell Ms. Twait or any other employee she was resigning, but stated something to the effect of she would not in a resignation letter until she received requested information to forward to her attorney. Based upon the claimant's contact with Ms. Jurgensen and Ms. Twait, the employer anticipated the claimant would resign at the end of the school year. She did not and instead declared she would file for unemployment, prior to the employer discharging her. On May 25, 2018, when the employer did not receive a resignation letter, it discharged her in conjunction with the end of the school year (Employer Exhibit 8).

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,566.00, since filing a claim with an effective date of June 10, 2018. The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

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 Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

Employee misconduct must be a current act in order to deny unemployment benefits. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). The most recent incident leading to discharge must be a current act of misconduct in order to disqualify an individual from receiving benefits. This incident must occur within a reasonable period from the discharge date. The issue is when the employer learned of the current act and did it act to terminate the individual within a reasonable period of time.

In this case, the employer presented the claimant her evaluation in April 2018, which she refused to sign (Employer Exhibit 2). The employer did not fire her at that time for the contents of her evaluation, which included references to sleeping on the job and unprofessional conduct, (Employer Exhibit 2) but rather continued to allow her work out the school year. The employer also did not discipline or discharge her immediately for failure to sign the evaluation. No other incidents occurred between the April evaluation and her discharge on May 25, 2018. The employer cannot on one hand argue that the claimant's conduct (as outlined in her evaluation) was so egregious that it warranted discharge instead of a lesser penalty, but then allow the claimant to continue working for nearly a month and a half before determining she should be discharged. The employer has not met its burden of proof to establish a current or final act of misconduct, and, without such, the history of other incidents need not be examined.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job related misconduct. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

DECISION:

The July 10, 2018, (reference 01), decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The claimant has not been overpaid benefits. The employer is not relieved of charges.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn