

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AIDA COSIC
Claimant

APPEAL 22A-UI-01965-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**JOHNSTON COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 12/20/20
Claimant: Respondent (2R)

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:

On December 22, 2021, Johnston Community School District (employer/appellant) filed an appeal from the decision dated December 21, 2021 (reference 02) that found claimant's discharge on December 23, 2020 did not disqualify her from unemployment insurance benefits.

A telephone hearing was held on February 14, 2022. The parties were properly notified of the hearing. Employer participated by HR Director Anthony Spurgetis. Aida Cosic (claimant/respondent) participated personally and with the assistance of a Bosnian language interpreter.

Employer's Exhibit 1 was 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?

FINDINGS OF FACT:

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

Claimant worked for employer as a full-time custodian. Claimant's first day of employment was January 25, 2017. Claimant's immediate supervisor was Rick Stark. Claimant's schedule was Monday through Friday, 3:30 p.m. to 11:30 p.m. The last day claimant worked on the job was December 23, 2020. Claimant was discharged on that date due to taking excessive breaks and being dishonest in an investigation.

Claimant and others in her position were allotted two 15-minute breaks and one 30-minute break during their shifts. A few weeks prior to discharge Stark reported to Spurgetis that he had concerns about whether night employees were taking excessive breaks during their shifts. Surveillance footage was reviewed and it was found that claimant had spent approximately 40 hours in the same classroom during her shifts over the course of the prior couple weeks.

Spurgetis questioned claimant and other night staff about this on December 11, 2020. Claimant stated that she believed everyone was taking longer breaks but not more than ten or fifteen more than allotted. Spurgetis later reviewed surveillance footage for that evening and determined claimant had taken breaks in excess of three hours on that date.

Spurgetis again questioned claimant on December 21, 2020. Spurgetis told her that he did not believe she was honest when questioned on December 11, 2020. He then showed her video surveillance from some of the days when she spent many hours in the same classroom. Claimant said she and others did take extra breaks at the end of their shifts but not "hours." Claimant was not given permission to take breaks beyond the allotted break times.

The surveillance footage did not show the interior of the classroom claimant was spending extended period of time in but did show the area outside that classroom. On at least one occasion the footage showed the motion-activated lights went off for an extended period of time while claimant was in the classroom, indicating she was motionless for an extended period of time while in the room. Spurgetis later determined that the classroom claimant and the other custodians were spending excessive time in was one of the few that had reliable cell phone reception.

The unemployment insurance system shows claimant has received unemployment insurance (UI) benefits in the gross amount of \$12,142.00 since the date of discharge. Claimant also received Federal Pandemic Unemployment Compensation (FPUC) in the gross amount of \$7,200.00 during this period.

The administrative record shows Spurgetis did participate in the fact-finding interview held prior to the decision allowing benefits being issued.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated December 21, 2021 (reference 02) that found claimant's discharge on December 23, 2020 did not disqualify her from unemployment insurance benefits is REVERSED.

- 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).

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.*

Claimant testified that the reason she and other custodians spent so much time in the same classroom was because they were "deep cleaning" in that area. It is difficult to believe that, throughout an entire high school, claimant and several other custodians would need to deep clean in the same classroom for more than a few hours, let alone for approximately 40 hours over the course of approximately two weeks. The more likely explanation for the extended periods of time claimant and the other custodians were spending in this classroom was because they were using their personal cell phones during excessive breaks in that area. Factual findings were made accordingly.

Employer has 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 was taking excessive breaks and was dishonest during the course of an investigation into that matter. This was a deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees. Claimant is disqualified from benefits effective with the date of separation.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

- a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

- b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

The unemployment insurance system shows claimant has received unemployment insurance (UI) benefits in the gross amount of \$12,142.00 since the date of discharge. Because the administrative law judge now finds claimant's separation from employment was disqualifying she has been overpaid UI in that amount.

Because employer did participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment, benefits shall be recovered from claimant; the charge for the overpayment against the employer's account shall be removed; and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

The administrative record shows claimant also received Federal Pandemic Unemployment Compensation (FPUC) in the gross amount of \$7,200.00 after the separation from employment. This matter is remanded to the Department for issuance of a decision as to whether claimant was overpaid FPUC.

DECISION:

The decision dated December 21, 2021 (reference 02) that found claimant's discharge on December 23, 2020 did not disqualify her from unemployment insurance benefits is REVERSED. The separation from employment was disqualifying. Benefits are denied from the date of separation and continuing until claimant earns insured wages in an amount equal to ten times her weekly benefit amount.

Claimant has been overpaid unemployment insurance (UI) benefits in the gross amount of \$12,142.00 since the date of discharge. Benefits shall be recovered from claimant. The charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

REMAND:

This matter is remanded to the Department for issuance of a decision as to whether claimant was overpaid FPUC.



Andrew B. Duffelmeyer
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March 3, 2022
Decision Dated and Mailed

abd/abd