

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIELLE P FREESE
Claimant

APPEAL 22A-UI-03607-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERTCH CABINET, LLC
Employer

**OC: 12/05/21
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 January 11, 2022, (reference 01) unemployment insurance decision that allowed benefits based upon the determination that claimant was discharged, but not for disqualifying misconduct. The parties were properly notified of the hearing. A telephone hearing was held on March 7, 2022. The claimant, Danielle P. Freese, did not participate. The employer, Bertch Cabinet, LLC, participated through testifying witness Ashley Stanley, with Sam Bormann, who did not testify. Employer's Exhibits 1 through 11 were admitted. 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 as a machine apprentice from May 6, 2019, until this employment ended on December 6, 2021, when she was discharged.

The employer had imposed a number of warnings in the days preceding claimant's discharge. The employer had issued warnings for conduct and absenteeism. These warnings imposed suspensions on claimant, though claimant was discharged before serving the suspensions.

On December 6, 2021, claimant was witnessed without appropriate personal protective equipment (PPE) while on the production floor. The employer's policy dictates that all employees who are on the production floor must be wearing all required PPE at all times. Claimant was first observed not wearing her safety glasses, then was observed not wearing her hear plugs. When she was approached about these issues, she simply acknowledged that she

knew she was not wearing the PPE. The employer determined that discharge was appropriate because of the recent issues claimant had. Stanley informed claimant of the decision to discharge for the reasons of “conduct, absenteeism, and safety violations.”

Claimant had received one prior warning for improper PPE use. On April 23, 2021, she was issued a warning after being observed wearing earbuds instead of earplugs. The warning indicated it was a first warning and stated that future similar conduct could result in additional discipline including suspensions or discharge.

Claimant knew about the employer’s policies because she received the employee handbook at hire. She also participated in safety and policy trainings during employment.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp’t Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp’t Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). The employer

has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all, provided the discharge is not contrary to public policy. However, if the employer 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.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. Training or general notice to staff about a policy is not considered a disciplinary warning.

While claimant had received a prior warning about PPE use, which was the incident that ultimately led to her discharge, that prior warning did not explicitly warn claimant that another such violation would jeopardize her employment. Additionally, while claimant had received other warnings about other conduct during the week leading to her discharge, these warnings imposed suspensions, as opposed to discharge. The conduct for which she was warned in these warnings did not occur again prior to discharge. It is not reasonable for claimant to be expected to know that the combination of all of these issues would result in her discharge. Accordingly, no disqualification is imposed, and benefits are allowed, provided the claimant is otherwise eligible.

Because the separation is not disqualifying, the issues of overpayment, repayment, and participation are moot.

DECISION:

The January 11, 2022, (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 participation are moot.



Alexis D. Rowe
Administrative Law Judge

March 23, 2022
Decision Dated and Mailed

ar/mh