

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAI MASON
Claimant

**SEQUEL YOUTH SERVICES OF
WOODWARD**
Employer

APPEAL 20A-UI-11645-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Respondent (5R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the September 14, 2020 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon her being laid off from work. The parties were properly notified of the hearing. A telephone hearing was held on November 6, 2020. The claimant, Kai Mason, did not participate. The employer, Sequel Youth Services of Woodward, participated through witness Ronice Payne. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Is the claimant overpaid benefits?
Is the claimant overpaid Federal Pandemic Unemployment Compensation?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time beginning February 3, 2020. She worked as a direct support professional providing daily living tasks to clients in a group home. On June 12, 2020, the claimant changed her availability with this employer from full-time to PRN (as needed) due to personal obligations. She worked last on September 5, 2020. She did not accept assignments from the employer after that date and did not return the employer's calls. Claimant was not obligated to accept a certain number of assignments with the employer on PRN status and was not obligated to check in with the employer. The employer assumed that the claimant voluntarily quit but it did not receive a verbal or written resignation.

Claimant has received \$3,497.69 in gross unemployment insurance benefits since filing her original claim effective May 31, 2020. Claimant has also received \$4,800.00 in Federal

Pandemic Unemployment Compensation benefits from May 31, 2020 through July 25, 2020. Claimant has also received federal Pandemic Emergency Unemployment Compensation (PEUC) benefits and Lost Wages Assistance (LWA) benefits. The employer did not participate in the fact-finding interview or complete the questionnaire that was emailed to it regarding this separation from employment.

The issue of whether the claimant has been able to and available for work consistent with her base period has yet to be adjudicated by the Benefits Bureau of Iowa Workforce Development. Whether claimant has been able to work, available for work, and actively seeking work shall be remanded to the Benefits Bureau for an initial investigation and determination.

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. Benefits are allowed, provided the claimant is otherwise eligible.

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).

The employer has the burden of proof in establishing disqualifying job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. 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).

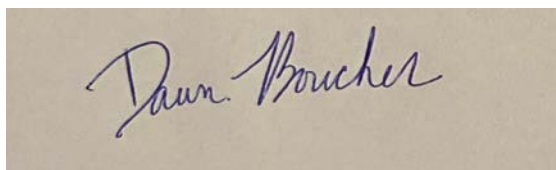
There was no evidence that the claimant intended to voluntarily quit her position as no verbal or written resignation was received. Further, the claimant was not required to work a certain number of shifts or stay in contact with the employer based upon her PRN status. No incident of insubordination or any other type of substantial job-related misconduct has been established by the employer. The employer discharged the claimant for no disqualifying reason. As such, benefits are allowed, provided the claimant is otherwise eligible. Because benefits are allowed, the issues of overpayment of benefits and overpayment of Federal Pandemic Unemployment Compensation benefits with regard to the separation from employment are moot.

DECISION:

The September 14, 2020 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, **provided she is otherwise eligible.**

REMAND:

The issue of whether the claimant has been able to and available for work consistent with her base period as of May 31, 2020, and whether the claimant has been actively seeking work is remanded to the Benefits Bureau for an initial investigation and determination.



Dawn Boucher
Administrative Law Judge

November 12, 2020
Decision Dated and Mailed

db/scn