

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FAITH A OLOFSON
Claimant

RISEN SON CHRISTIAN VILLAGE
Employer

APPEAL 21A-UI-04747-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/22/20
Claimant: Respondent (2)

Iowa Code § 96.5(2) a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the January 28, 2021 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits based upon claimant's separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on April 13, 2021. The claimant did not participate. The employer participated through witnesses Benane Akurkuch and Ben Eddy. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any regular 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: Claimant was employed full-time as a certified nurse's aide and medication aide at the employer's long term care facility. She was employed from March 28, 2018 until October 12, 2020 when she was discharged.

On October 9, 2020, the claimant cut another co-worker off while she was driving on the road after her shift. The following day, October 10, 2020, the co-worker stated to the claimant that she cut her off the night before. The claimant responded to the co-worker "next time I will just run you over". The co-worker reported this to human resources.

Claimant was notified on October 10, 2020 that she was being suspended pending investigation into the incident. Claimant waited in her car for the co-worker to complete her shift. Claimant then followed the co-worker by car. Claimant was bumper to bumper with the co-worker and then sped past the co-worker. The co-worker reported the incident to management and the police. The claimant was notified on October 12, 2020 that she was being discharged for violation of the employer's written policies regarding harassment and threats towards co-

workers. The employer has a written policy providing that threats of violence towards co-workers may lead to discharge. Claimant was made aware of the policy.

Claimant's administrative records establish that she has not filed any weekly-continued claim and therefore has received \$0.00 in unemployment insurance benefits to date. The employer did not participate in a fact-finding interview and Ms. Akurkuch was unaware if one took place. Claimant's administrative records do not reflect that a fact-finding interview was scheduled.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or

disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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.

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).

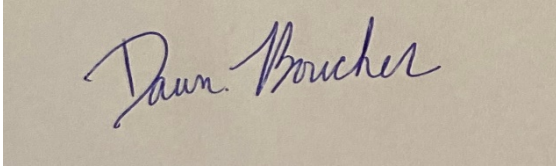
Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Gimbel v. Employment Appeal Bd.*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). The focus is on deliberate, intentional, or culpable acts by the employee. *Id.* Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

In this case, claimant specifically threatened to harm a co-worker in violation of the employer's written policy. The claimant then deliberately waited for the co-worker to leave after her shift, followed her in her personal vehicle and drove erratically next to the co-worker. This was a material breach of the claimant's duties that arose out of her contract of hire. As such, substantial job-related misconduct has been established. Benefits are denied. Because no benefits have been paid to date, the issues of overpayment and chargeability are moot.

DECISION:

The January 28, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for a current act of job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount after her October 12, 2020 separation date, and provided she is otherwise eligible. No benefits were paid to date and as such, the issues of overpayment and chargeability are moot.



Dawn Boucher
Administrative Law Judge

April 16, 2021
Decision Dated and Mailed

db/scn

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.