

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARTINA B CLASSEN
Claimant

APPEAL 20A-UI-02254-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ERLBACHER BROS INC
Employer

OC: 02/23/20
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 March 13, 2020, Erlbacher Bros Inc. (employer) filed an appeal from the March 11, 2020 (reference 01) unemployment insurance decision that determined Martina Classen (claimant) was eligible to receive unemployment insurance benefits.

A telephone hearing was held on April 27, 2020. The parties were properly notified of the hearing. Employer participated by Office Manager Theresa Erlbacher. Claimant did not register a number for the hearing and did not participate.

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 truck driver. Claimant's first day of employment was August 5, 2019. The last day claimant worked on the job was January 3, 2020. Claimant's immediate supervisor was Dean Erlbacher. Claimant separated from employment on January 3, 2020.

Claimant informed Dean Erlbacher on that date that she was quitting. The reason for claimant's quitting was the rescission of a DOT medical exemption which allowed her to have a Commercial

Driver's License (CDL). The medical exemption was rescinded because claimant was involved in a commercial vehicle crash on December 2, 2019, in which she contributed by failing to yield the right of way. See Exhibit 1. Claimant was unable to continue working for employer without a CDL and quit for that reason. There was no other work available for claimant at employer without a CDL.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$481.00 for a total of eight weeks, from the benefit week ending February 29, 2020 and continuing through the benefit week ending April 18, 2020. The total amount of benefits paid to date is \$3,848.00.

Dean Erlbacher provided a statement at the fact-finding hearing on behalf of employer. He provided substantially the same information at that time as is set forth above.

Claimant has also received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$1,200.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the March 11, 2020 (reference 01) unemployment insurance decision that found claimant eligible for benefits is REVERSED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

While claimant did express an intent to quit, she did not have the option of remaining employed after losing her CDL. This is because she could no longer perform the work for which she was hired and no other work was available for her to perform for employer. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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).

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).

This case is similar to *Cook v. Iowa Dept. of Job Service*. 299 N.W.2d 698 (Iowa 1980). In *Cook*, a delivery driver was discharged due to employer's insurance carrier declining to cover him any longer. The insurance carrier declined to cover him further because of several speeding citations. The employer wished to keep him on as an employee but did not have non-driving work available

for him, and he separated from employment as a result. The Iowa Supreme Court affirmed claimant was discharged due to misconduct, finding his traffic violations were willful and rendered him uninsurable and thus unemployable.

Here, claimant lost her CDL due to her involvement in a commercial vehicle crash on December 2, 2019, in which she contributed by failing to yield the right of way. Because claimant lost her CDL, she was no longer employable with employer. Claimant lost her license due to her own actions: a crash based at least in part on her failure to yield the right of way. Like in *Cook*, employer could no longer employ claimant based on her own willful misconduct. While claimant's conduct was arguably not as blameworthy as the claimant's in *Cook*, as its unclear whether her conduct resulted in citations, the result was the same: the loss of her ability to perform work for employer. Claimant's failure to maintain her license based on her own actions or omissions constitutes a material breach of the duties and obligations arising out of such worker's contract of employment

The result would be the same if claimant had voluntarily quit rather than being discharged. Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). Loss of her license does not constitute good cause attributable to employer for quitting.

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.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$481.00 for a total of eight weeks, from the benefit week ending February 29, 2020 and continuing through the benefit week ending April 18, 2020. The total amount of benefits paid to date is \$3,848.00.

Dean Erlbacher provided a statement at the fact-finding hearing on behalf of employer. He provided substantially the same information at that time as is set forth above. Because employer did participate in the fact-finding interview, 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.

DECISION:

The March 11, 2020 (reference 01) unemployment insurance decision that found claimant eligible for benefits is REVERSED. Claimant is ineligible for benefits until she earns wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Claimant has been overpaid benefits in the amount of \$3,848.00. Benefits shall be recovered. 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:

Claimant has also received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$1,200.00. The issue of overpayment of FPUC benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an investigation and decision.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

April 29, 2020
Decision Dated and Mailed

abd/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.