

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSEPH M TIEFENTHALER
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 21A-UI-02450-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/19/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge for Misconduct

STATEMENT OF THE CASE:

On December 31, 2020, Joseph Tiefenthaler (claimant/appellant) filed an appeal from the December 21, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on July 1, 2020 by failing to report for three days in a row without notifying employer.

Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for February 25, 2021 at 10 a.m. Claimant participated personally. Program Coordinator Shelly Criswell participated as a witness for claimant. The University of Iowa (employer/respondent) participated by HR Business Analyst Jessica Wade.

Official notice was taken of the administrative record.

ISSUES:

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

FINDINGS OF FACT:

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

Claimant began working for employer on March 2, 2020. The last day claimant performed work for employer was June 26, 2020. Claimant was employed as a temporary professional employee and worked as a special assistant to the International Writing Program. Claimant was supervised by the program directors and Criswell. Claimant's hours varied due to the temporary nature of the position but he typically worked between 33 and 40 hours per week. There was not a designated time that claimant was to begin work each day. If claimant was to be late or absent he was to notify the program directors or Criswell. He was discharged by the program directors on June 26, 2020.

Claimant was discharged due to absenteeism. The most recent incident leading to discharge occurred on June 23, 2020. On that date, claimant was to participate in a morning meeting with

Criswell. Claimant did not participate in the meeting due to oversleeping. Claimant did work later that day and on June 24 and 25, 2020.

Claimant had previously been late or absent on March 5, 11, and 17, 2020. These incidents were also due to oversleeping. The program directors met with claimant on March 12, 2020, to discuss his attendance issues and to set expectations moving forward. During that meeting and on subsequent occasions, claimant explained that he suffered from insomnia and had been working with a medical provider to address that issue.

After the June 23, 2020 absence, claimant again explained the reason for the absence was due to insomnia. Claimant recalls not being able to fall asleep until around 6 a.m. on that date. He set several alarms so that he could still participate in the morning meeting but slept through them. While Criswell would have liked claimant to be present for the meeting but his absence was not critical and the meeting went well without him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated December 21, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on July 1, 2020 by failing to report for three days in a row without notifying employer is REVERSED.

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 not 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's failure to attend the morning meeting or to report his absence prior to the meeting on June 23, 2020 was not willful or deliberate. Claimant intended to participate in the meeting and took reasonable measures to be able to, including setting several alarms. Neither was claimant's absence the result of carelessness or negligence of such degree of recurrence as to constitute misconduct. Claimant had not had absences of a similar nature for several months, as after the initial absences he took reasonable steps to prevent recurrence. This included working with his medical provider to address the issue, which it appears was successfully addressed for several months.

The administrative law judge finds a single, unintentional absence several months after the most recent absences – which were also unintentional and which claimant took reasonable steps to prevent in the future – does not constitute substantial job-related misconduct such that claimant is disqualified from benefits.

DECISION:

The decision dated December 21, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on July 1, 2020 by failing to report for three days in a row without notifying employer is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
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March 5, 2021
Decision Dated and Mailed

abd/scn