IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

TIFFANY J CAMARILLO Claimant **LINCOLNWAY ENERGY LLC** Employer	**APPEAL 20A-UI-12279-AD-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/05/20** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On October 1, 2020, Tiffany Camarillo (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated September 21, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on July 7, 2020 for personal reasons.

A telephone hearing was held on December 3, 2020. The parties were properly notified of the hearing. The claimant participated personally. Lincolnway Energy LLC (employer/respondent) participated by Plant Manager Chris Cleveland. Employer's Office Manager, Kay Gammon, observed the hearing.

Claimant's exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

I. Was the separation from employment 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's first day of employment was November 26, 2018. Claimant briefly worked as a utility worker before moving to a cook position. She remained in that position until approximately September 1, 2020, when she moved to a D&E position. The last day claimant worked on the job was July 4, 2020. Claimant separated from employment on July 7, 2020. Claimant resigned on that date.

Claimant learned during her July 4, 2020 shift that she would be moved back to a cook position effective with her next scheduled shift. This change was made due to staffing needs and in part in response to the pandemic. Claimant was told by her supervisor that the change would be permanent "for now." Claimant was specifically concerned about having to lift 50-pound bags of product. In her current shift she was mostly working in a seated position and others were available to help with tasks that may be difficult for her due to her pregnancy. Claimant had planned to continue working for employer until she gave birth.

Claimant called Cleveland to notify him of her resignation. Claimant told Cleveland that "due to her situation" she would have to quit, as she could not perform the duties of the cook position. She stated she would otherwise be willing and able to work. Cleveland understood claimant's "situation" referred to her pregnancy, which he was aware of. Cleveland acknowledged claimant's resignation and clarified that the change was not a demotion and she would have the same hours and pay. The conversation was short.

Claimant then sent Cleveland an email shortly thereafter, reiterating that she was resigning effective immediately because she was not able to perform in the cook position due to pregnancy. Claimant did not explicitly request an accommodation in the phone call or email, nor did Cleveland inquire as to whether an accommodation was possible and may prevent the need to resign.

Claimant gave birth on or about September 14, 2020 and did not recover until approximately six weeks after. Since her recovery she has not been searching for work, nor has she sought to return to employer. Claimant filed weekly claims for benefits from the benefit week ending July 11, 2020 and continuing through the benefit week ending September 12, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated September 21, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on July 7, 2020 for personal reasons is REVERSED. The separation from employment was not disqualifying. Claimant is therefore eligible for benefits, provided she otherwise meets all eligibility requirements.

As an initial matter, the administrative law judge finds claimant did not voluntarily resigned but was instead discharged from her position. Claimant did not have the option of remaining employed in the D&E position, which she had held for approximately nine months by that point. Employer told claimant she would no longer be in that position and would instead be transferred to another position which she was unable to perform in. Employer effectively eliminated claimant's position; claimant had no say in whether she would continue in that position. Claimant was willing and able to continue in the D&E position. As such, the case must be analyzed as a discharge. *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 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). Employer's decision to essentially eliminate claimant's position and instead place her in another position was not made for disciplinary reasons. There is no indication that claimant

committed any misconduct or was anything but a dedicated and professional employee. It is unfortunate that there was not further communication between the parties so that perhaps the employment relationship could be maintained.

Because claimant's discharge was not for substantial job-related misconduct, she is not disqualified from benefits. Benefits are therefore allowed, provided she is otherwise eligible.

DECISION:

The decision dated September 21, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on July 7, 2020 for personal reasons is REVERSED. The separation from employment was not disqualifying. Claimant is therefore eligible for benefits, provided she otherwise meets all eligibility requirements.

Andrew B. Duffelmeyer
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December 11, 2020
Decision Dated and Mailed

abd/mh