

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRICIA A AHMAD KHAN
Claimant

APPEAL 20A-UI-03579-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITYWIDE CLEANERS INC
Employer

**OC: 03/22/20
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

On April 29, 2020, the employer filed an appeal from the April 20, 2020, (reference 01) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 21, 2020. Claimant participated. Employer participated through president John Albert. Employer's Exhibit 1 was received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?
Is claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 6, 2020. Claimant last worked as a full-time production worker. Claimant was separated from employment on March 23, 2020, when she was discharged.

Employer has an Employee Dismissal policy that states failure to carry out any reasonable request for a job assignment or failure to carry out job duties can result in immediate dismissal. Claimant was aware of the policy.

Employer has monitors that track production for each employee. Employer requires employees to use their monitor to make sure they are keeping up with production requirements. Claimant's understanding was that she only had to track her production when she had a group of clothing to work on. Claimant believed that she was not required to use the monitors if she was only

working on an article of clothing here or there in between doing other jobs. Claimant also did not use the monitors on a regular basis because she believed her production levels were high and therefore the monitors unnecessary. Supervisor Alex Turner reminded claimant several times to use her monitor, but he never told claimant that her failure to do so was insubordinate or otherwise informed her that she was putting her job in jeopardy.

Midway through her employment, claimant developed a personality conflict with owner John Albert. Albert believed claimant was not friendly enough when he tried to say hello. Office manager Janet Albert and supervisor Turner also thought claimant seemed angry and unapproachable, but there were no specific incidents or things that claimant said that she was punished for.

On March 23, 2020, John and Janet Albert and Alex Turner met with claimant. Employer told claimant that her personality changed and she was argumentative and that she needed to use the monitors. Claimant disagreed with the employer's perception of her personality. The group had a 20 minute discussion, but claimant still did not agree with employer's perception of the situation. Employer decided claimant's personality and attitude did not fit in with the work environment and terminated her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 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 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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *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 is not 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, employer terminated claimant because her personality did not fit the work environment. There are no specific incidents employer can point to where claimant was so unapproachable or unfriendly that would rise to the level of misconduct. During the March 23, 2020, meeting claimant disagreed with employer's perception of her demeanor. But claimant did not raise her voice or use any profanity. Disagreement with a viewpoint is not misconduct.

In regard to the use of monitors, claimant had never been previously notified that her failure to use the monitors could result in termination from employment. Had employer issued a written warning and claimant still declined to use the monitors, then she would be guilty of workplace misconduct. But here, employer had not given claimant sufficient notice that her behavior would result in termination.

Claimant may have been a poor fit for the work environment. Employer may have discharged claimant for good business reasons, but it did not establish claimant was terminated for any job-related misconduct.

Since the separation from employment is not disqualifying, the issues regarding overpayment will not be addressed. Claimant has not been overpaid benefits. Employer's account may be charged for state-funded benefits. Claimant is also entitled Federal Pandemic Unemployment Compensation. Employer will not be charged for the federal benefits. See Public Law 116-136, Sec. 2104(b).

DECISION:

The April 20, 2020, (reference 01) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Christine A. Louis
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May 26, 2020
Decision Dated and Mailed

cal/mh