

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATIENCE GOYEE
Claimant

TPI IOWA II LLC
Employer

APPEAL 20A-UI-02274-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/09/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

The claimant/appellant, Patience Goyee, filed an appeal from the March 4, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits based upon separation from TPI Iowa II LLC. The parties were properly notified about the hearing. A telephone hearing was held on April 27, 2020. The claimant participated personally. The employer, TPI Iowa II LLC., participated through Danielle Williams, Senior HR Coordinator.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed in production, beginning in 2016, and was separated from employment on February 7, 2020, when she was discharged.

The final incident leading to discharge occurred on February 3, 2020 when she engaged in a verbal altercation with a contractor working at the employer’s premises. Claimant and another person named Rose, who was working on the cleaning crew, had an argument in the break room over the lunch break. The claimant acknowledged Rose called her a bitch and she called Rose a bitch. The claimant felt she was defending herself. The argument escalated to the point other employees had to step between the claimant and Rose, and she was escorted out of the break room. She then went back into the break room a second time, and had to be escorted out. Claimant was discharged for use of inappropriate and abusive behavior in the workplace. Claimant had received a previous warning for inappropriate language in the workplace on November 22, 2017.

The claimant worked consecutively, without any break in employment between this employer TPI Iowa II LLC and also a parent company, TPI Iowa LLC. The claimant's employment from both entities ended on February 7, 2020, and the issue of her separation from TPI Iowa LLC., has been addressed in 20A-UI-01782-DB-T.

Despite being denied benefits at initial fact-finding, the decision was made by Iowa Workforce Development to release funds of claimants while their appeals were pending due to the backlog in appeals caused by the recent COVID 19 outbreak. Claimant was one of the individuals whose funds were released pending appeal. The claimant received both regular and federal (through Federal Pandemic Unemployment Compensation) unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's separation from employment is disqualifying.

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.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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).

Employers generally have an interest in protecting the safety of all of its employees and invitees. The employer has presented substantial and credible evidence that claimant used abusive language at an employee when she yelled at her and called her a bitch. This is in violation of the employer's known policy. Further, the Iowa Court of Appeals has determined that "[t]he use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). The employer has met its burden of proof in establishing the claimant committed job-related misconduct. As such, benefits are denied.

The issues of whether the claimant has been overpaid regular and federal unemployment insurance benefits under Federal Pandemic Unemployment Compensation (FPUC) are remanded to the Benefits Bureau for an initial investigation and decision.

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>.

DECISION:

The unemployment insurance decision dated March 4, 2020, (reference 02) is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until the claimant has earned wages for insured work equal to ten times her weekly benefit amount after her separation from employment and is otherwise eligible.

REMAND: The issues of whether the claimant has been overpaid regular and federal unemployment insurance benefits under Federal Pandemic Unemployment Compensation (FPUC) are remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
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May 8, 2020
Decision Dated and Mailed

jlb/scn