

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KATHY SIMONTON**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 19A-UI-09059-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 08/18/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the November 6, 2019 (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 11, 2019, at 8:00 a.m. Claimant participated. Employer participated through Cathy Harvey, Hearing Representative, and Diane Springer, Human Resources Manager. Employer's Exhibits E1 – E12 were admitted.

**ISSUE:**

Whether claimant's separation was a discharge for disqualifying job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: In 2014, claimant had her pharmacy technician registration suspended for two weeks by the Iowa Board of Pharmacy. (Exhibit E3 – E7) The board's decision suspending claimant's registration states that claimant's registration will not automatically be reinstated at the expiration of the two-week suspension period and that claimant must make a written application for reinstatement to the Iowa Board of Pharmacy. (Exhibit E6) Following the suspension, claimant stopped working as a pharmacy technician until she decided to renew her license in early 2019. (Claimant Testimony) Claimant contacted the national pharmacy technician certification board in Washington, D.C. and took the exam in April 2019. (Claimant Testimony) Claimant obtained her license on May 3, 2019. (Claimant Testimony) Claimant did not contact the Iowa Board of Pharmacy to apply for reinstatement at that time. (Claimant Testimony)

On September 24, 2019, claimant began working for Hy-Vee, Inc. part-time as a certified pharmacy technician. (Springer Testimony) Claimant informed the Iowa Pharmacy Board of her employment. (Claimant Testimony) On October 22, 2019, the Iowa Pharmacy Board informed employer that claimant was not registered as a pharmacy technician. (Springer Testimony; Exhibit E1) On October 22, 2019, employer discharged claimant because claimant did not have a valid registration and, thus, could not work in a pharmacy in any capacity. (Springer Testimony) Claimant knew that she must be registered in order to work in a pharmacy. (Claimant Testimony)

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

Iowa Code section 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 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(1)(a) provides:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). 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).

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 cannot be based on such past act or acts. The termination of employment must be based on a current act.

Conduct asserted to be disqualifying misconduct must be 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). Whether the act is current is measured by the time elapsing between the employer's awareness of the misconduct and the employer's notice to the employee that the conduct provides grounds for dismissal. *Id.* at 662.

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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

When a professional license is required to work in a profession, the maintenance of that license is the employee's responsibility without an agreement to the contrary. Similarly, when registration is required to work in a profession, claimant is responsible for maintaining the registration. Claimant may have had a pharmacy technician license but she was not registered in the State of Iowa. The Iowa Board of Pharmacy's order was very clear; claimant knew or should have known that she could not perform the job that she was hired to do until her registration was reinstated by the board. Employer is not obligated to accommodate claimant during a license or registration suspension period but does have a legal obligation to abide by state licensing statutes and regulations. Employer discharged claimant for disqualifying job-related misconduct. Benefits are denied.

**DECISION:**

The November 6, 2019 (reference 03) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Decision Dated and Mailed

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