

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CAROL L COOK**  
Claimant

**ROSE ACRE FARMS**  
Employer

**APPEAL 20A-UI-01441-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/19/20  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the February 10, 2020 (reference 01) unemployment insurance decision that denied unemployment insurance benefits to the claimant based upon her discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on March 4, 2020. The claimant, Carol L. Cook, participated personally. The employer, Rose Acre Farms, participated through witness Kathleen Baute. Employer's Exhibit 1 was admitted.

**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: Claimant was employed full-time as a truck driver. She began her employment on January 3, 2018 and her employment ended on January 22, 2020, when she was discharged. Her last day worked on the job was January 17, 2020. Her job duties consisted of transporting waste and picking up dumpsters at the employer's egg hatchery. Her immediate supervisor was Jeffrey Mitchell.

Claimant received a written warning on June 26, 2018 when she hit the door header changing the eggshell dumpster and damaged it. See Exhibit 1. On December 5, 2019, she received a written warning for damaging the tool box on the truck when she hit a railing. See Exhibit 1. On January 17, 2020, claimant received a three-day suspension for hitting the top of the door with the lift up on the truck. See Exhibit 1. Following her three-day suspension, her supervisor telephoned her on January 22, 2020 and told her that they had to let her go. There were no further incidents following the January 17, 2020 incident. The employer was not conducting an investigation during the January 17, 2020 through January 22, 2020 period. No further evidence was gathered and no further investigation ensued. Claimant was never told that the January 17, 2020 could lead to discharge, rather, she was given a three-day suspension as discipline for the incident.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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.

The employer has the burden of proof in establishing disqualifying job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute 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). Further, the discharge cannot be based upon a past act of misconduct, it must be based upon a current act. Iowa Admin. Code r. 871-24.32(8). The purpose of this rule is to assure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises. For example, an employer may not convert a lay off into a termination for misconduct by relying on past acts. *Milligan v. EAB*, 802 N.W.2d 238 (Table)(Iowa App. June 15, 2011).

In this case, the employer gave the claimant a three-day suspension for the January 17, 2020 incident. Then, after the claimant served her three-day suspension, the employer independently decided to discharge her. The employer has failed to establish that there was any current act between her suspension and her discharge that would be considered disqualifying job-related misconduct. As such, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The February 10, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn