

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHLY D NICKELS
Claimant

FRANK'S TREE SERVICE INC
Employer

APPEAL 21A-UI-03600-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Ashly D Nickels, the claimant/appellant, filed an appeal from the January 20, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 29, 2021. Ms. Nickels participated and testified. The employer did not participate. Claimant's Exhibits A, B and C were admitted into evidence. Official notice was taken of the administrative record.

ISSUE:

Was Ms. Nickels discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Nickels began working for the employer on July 27, 2018. She worked as a full-time secretary and later a full-time office manager.

Ms. Nickels is the fiancée of a contractor who also works for the employer. In August 2020, a derecho storm hit Iowa. The employer heard rumors that Ms. Nickels and her fiancé were taking side jobs that were taking work from the employer. Initially, Ms. Nickels, her fiancé and the employer resolved the matter. The rumors resurfaced and Ms. Nickels' fiancé quit on November 11, 2020.

On November 12, 2020, Ms. Nickels attended work. That morning, the Frank Orr, the owner told Ms. Nickels that she was fired for stealing time by not clocking out on several days. Ms. Nickels accused the employer of stealing employees' time by making not paying them for all of the time they worked. Mr. Orr told Ms. Nickels that she was done and she left. Less than one hour later, Mr. Orr called Ms. Nickels, apologized for their earlier conversation and asked to her to come back to work. Ms. Nickels went back to work and worked a full day. That evening, Mr. Orr's daughter and the new office secretary called Ms. Nickels and told her that her employment was terminated because Ms. Nickels and her fiancé had taken jobs from the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Nickels was discharged from employment for no disqualifying reason.

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 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(4) provides:

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.

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). 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). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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.

In this case, the employer did not participate in the hearing and provided no evidence to establish misconduct on the part of Ms. Nickels. The employer has failed to meet its burden. Benefits are allowed

DECISION:

The January 20, 2021, (reference 01) unemployment insurance decision is reversed. Ms. Nickels was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
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March 31, 2021
Decision Dated and Mailed

dz/ol