

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**VIRGINIA BOWN**  
Claimant

**CALVIN COMMUNITY**  
Employer

**APPEAL 20A-UI-12487-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/17/20**  
**Claimant: Appellant (2)**

---

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

**STATEMENT OF THE CASE:**

On October 12, 2020, Virginia Bown (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated October 9, 2020 (reference 02) that denied benefits based on a finding claimant was discharged on July 12, 2020 for conduct not in the best interest of employer.

A telephone hearing was held on December 9, 2020. The parties were properly notified of the hearing. The claimant participated personally and was represented by Jon Geyer. Calvin Community (employer/respondent) participated by HR Director Matt Puffer. Participating as witnesses for employer were Building Manager Nate Nidey and HR Specialist Tiffany Elding.

Claimant's Exhibits 1-3 were admitted. Employer's Exhibits A-F were admitted. Official notice was taken of the administrative record.

**ISSUES:**

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was September 24, 2018. Claimant worked for employer full time in its laundry department. Claimant's immediate supervisor was Nidey. The last day claimant worked on the job was July 22, 2020. Claimant was discharged at that time.

Claimant was discharged due to employer's concern that claimant presented a safety issue. Employer met with claimant on July 16, 2020 to discuss her attendance as well as work restrictions and accommodations. Claimant became upset during this meeting. This included crying and becoming defensive or argumentative.

Several coworkers came to Puffer after that meeting to report they were concerned about claimant. Employer did not make these coworkers available for the hearing and declined to disclose who made the reports or what specifically they consisted of. The coworkers generally alleged that they felt claimant was mentally unstable and they were concerned she “might do something.” One alleged that claimant had threatened to bring a sexual harassment claim against Nidey.

Claimant denies that she made any threats or otherwise indicated to coworkers that she “might do something.” Claimant was not aware of these reports and had no chance to respond to them prior to her discharge. Claimant was simply told she was being discharged due to safety issues.

Claimant was disciplined in June 2019 for an incident with a coworker who was also working in the laundry department. Claimant felt the coworker was making light of claimant’s back pain. This frustrated and irritated claimant. Claimant made a comment to a coworker along the lines of “somebody needs to leave the area before somebody got hurt.” She also slammed or pushed a chair during this incident. Claimant denies that she threatened to punch the coworker as was alleged in the disciplinary notice.

Claimant generally alleges employer discharged her due to a work-related injury that occurred around April 2020. The administrative law judge makes no finding as to whether employer’s decision to discharge claimant was motivated by this injury.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the decision dated October 9, 2020 (reference 02) that denied benefits based on a finding claimant was discharged on July 12, 2020 for conduct not in the best interest of employer is REVERSED.

Iowa Code section 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 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 provides in relevant part:

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).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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 focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and 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).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

It is the duty of the administrative law judge, as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and

knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2).

Claimant was discharged due to employer's concern that claimant presented a safety issue. The administrative law judge does not doubt that reports were made to employer by coworkers regarding their concerns about claimant. Nor does the administrative law judge doubt that employer found these reports troubling and decided to discharge claimant as a precaution. However, the question here is not whether employer had a good or understandable reason to discharge claimant. The question is whether claimant's discharge was based on a current act of substantial, job-related misconduct such that she is disqualified from benefits.

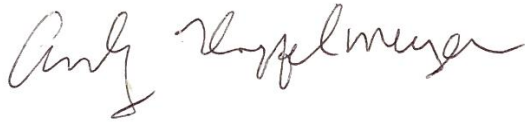
Based on the evidence presented, the administrative law judge cannot find claimant's discharge was due to disqualifying misconduct. This is because the evidence does not prove that claimant made any threats or otherwise engaged in conduct demonstrating she posed a serious safety issue.

The administrative law judge understands why employer chose not to identify the coworkers who made the reports, make them available for the hearing, or otherwise provide specific information as to their allegations. However, it is difficult to find claimant behaved as alleged based solely on largely nonspecific, second-hand accounts. Furthermore, claimant provided credible, first-hand testimony that she did not make any such threats, was unaware of the reports by coworkers, and had no opportunity to respond to them prior to her discharge. When weighing this evidence, the administrative law judge cannot find employer has carried its burden of proving claimant engaged in the alleged misconduct.

The administrative law judge notes claimant was emotional during the July 16, 2020 meeting and was involved in an incident approximately a year earlier during which she similarly behaved emotionally and inappropriately. This behavior was clearly unprofessional. However, the administrative law judge finds that claimant's emotional response during the meeting and a similar incident roughly a year earlier do not rise to the level of substantial, job-related misconduct such that she is disqualified from benefits.

**DECISION:**

The decision dated October 9, 2020 (reference 02) that denied benefits based on a finding claimant was discharged on July 12, 2020 for conduct not in the best interest of employer is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible.



---

Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

December 18, 2020  
Decision Dated and Mailed

abd/mh