

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS A RHINER
Claimant

**CENTRAL IOWA HOSPITAL
CORPORATION**
Employer

APPEAL 22A-UI-09524-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/18/21
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On April 13, 2022, Central Iowa Hospital Corporation (employer/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated April 11, 2022 (reference 03) that allowed unemployment insurance benefits based on a finding that claimant was dismissed from work on March 25, 2022 without a showing of misconduct.

A telephone hearing was held on June 21, 2022. The parties were properly notified of the hearing. Employer participated by HR Business Partner Kristin Beiner. Travis Rhiner (claimant/respondent) did not appear or participate.

Employer’s Exhibits 1-6 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was there a disqualifying separation from employment?
- II. Was the claimant overpaid benefits? If so, should claimant repay benefits or should employer be charged due to employer participation in fact finding?

FINDINGS OF FACT:

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

Claimant worked for employer as a full-time food and nutrition supervisor. Claimant’s first day of employment was February 14, 2022. The last day claimant worked on the job was March 22, 2022. Claimant was discharged on March 25, 2022.

The most recent incident leading to discharge occurred on March 21, 2022. Several employees reported that on that date claimant was behaving inappropriately toward a subordinate. This

included calling her “honey” and “babe,” trying to get her into situations where the two of them would be alone, and ultimately pulling her toward him when he asked her to accompany him into the freezer. The subordinate told him not to touch her and he became angry, called her useless, and told her she was fired. This conducted violated employer’s workplace sexual harassment policy.

During the course of the investigation it also became apparent that claimant frequently vaped while working, in violation of employer’s tobacco-free environment policy.

Claimant only partially denied these allegations when interviewed by employer as part of its investigation. He also stated he could not recall whether other incidents occurred as alleged. It is not credible that claimant would be unable to recall whether such serious conduct occurred as alleged.

The unemployment insurance system shows claimant has received unemployment insurance benefits in the total amount of \$4,704.00 since the date of separation. Employer attempted to participate in the fact-finding interview set for April 7, 2022 at 11:20 a.m. but was unable to participate due to no fault of its own.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated April 11, 2022 (reference 03) that allowed unemployment insurance benefits based on a finding that claimant was dismissed from work on March 25, 2022 without a showing of misconduct is REVERSED.

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

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.

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).

The administrative law judge finds employer has 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's conduct was deliberate and in violation of employer's policies and of the standard of behavior employer had the right to expect of him. Benefits are therefore denied effective with the date of separation.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The unemployment insurance system shows claimant has received unemployment insurance benefits in the total amount of \$4,704.00 since the date of separation. Because this administrative law judge now finds claimant was disqualified from benefits during that period, he has been overpaid benefits in that amount.

Because employer failed to participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10 and the overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment, benefits shall not be

recovered from claimant. However, neither shall employer be charged for benefits paid. This is because employer attempted to participate in the fact-finding interview set for April 7, 2022 at 11:20 a.m. but was unable to participate due to no fault of its own. The overpayment shall instead be charged to the unemployment insurance fund.

DECISION:

The decision dated April 11, 2022 (reference 03) that allowed unemployment insurance benefits based on a finding that claimant was dismissed from work on March 25, 2022 without a showing of misconduct is REVERSED. The separation from employment was disqualifying. Benefits are denied effective with the date of separation and continuing until claimant earns wages for insured work equal to ten times his weekly benefit amount.

Claimant was overpaid unemployment insurance benefits in the total amount of \$4,704.00. However, benefits shall not be recovered and employer's account shall not be charged. The overpayment shall instead be charged to the unemployment insurance fund.



Andrew B. Duffelmeyer
Administrative Law Judge

June 23, 2022
Decision Dated and Mailed

abd/abd