IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

JENNIFER SEXTON Claimant **AADG INC** Employer	**APPEAL 21A-UI-02685-SN-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 11/08/20** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 31, 2020, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she failed to perform satisfactory work even though she was capable of doing so. The parties were properly notified of the hearing. A telephone hearing was held on March 10, 2021, at 8:00 a.m. The claimant participated. The employer did not participate. The administrative law judge took official notice of the agency records.

ISSUE:

Whether the claimant's separation from employment was disqualifying?

FINDINGS OF FACT:

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

The claimant was employed full time as an order engineer from December 10, 2018, until this employment ended on November 3, 2020, when she was terminated. The claimant's immediate supervisor was Christopher Packer.

After hire, the claimant was only in training until January 11, 2019. The claimant is aware that generally employees were trained for four to six months. The claimant's training program was so expedited, she was not trained how to do the more complex orders.

After graduating from the employer's training program, the claimant was immediately assigned some of the most difficult orders. These orders are called level three orders. Prior to the onset of Covid19, the claimant frequently asked her coworkers in the office how to complete level three orders because she had never been trained how to complete them. In fact, two other order engineers, Jan Lonning and Shelly Broeckholt, told the claimant that she should not have been assigned level three orders, until she had worked there for two years or more. Nevertheless, the claimant was able to perform her tasks sufficiently by relying on veterans to give her on the job training.

In January or February 2020, the employer implemented a weekly performance metric for all employees. The performance metric form tracked the number of errors in a week to determine the quality metric and it used a percentage to track the productivity metric.

In March or April 2020, the employer sent all staff home to work remotely until further notice. Just prior to being sent home, the claimant spoke to Mr. Packer about her productivity and quality metrics and he told her that she was doing a good job. At the time, the claimant's productivity metrics were at 85%. The claimant had an average of three to four errors on her quality metrics per week.

While employees were working remotely, employees logged into a website that replaced the time clock. This allowed the employer to monitor the amount of time each employee was working.

Over the next few months, the claimant's quality metrics remained the same, but her productivity metrics dropped to about 50%. The reason the claimant's productivity dropped was that she had difficulty getting the same amount of help she had previously relied on when she worked in the office. An issue that would have taken 15 minutes in the office to resolve could take as much as half of the day to resolve in the office. This was due to the fact that the work is very difficult to explain over email or over the phone. In the office, a veteran coworker could illustrate a picture of what the order would look like to visually demonstrate to the claimant what needed to be done.

In October 2020, Mr. Packer issued the claimant a performance improvement plan stating she would have to drastically improve her performance to remain employed. The claimant did not remember how much she had to improve her performance to keep her job. The claimant was also assigned a mentor, Order Engineer Kristi Miller. Ms. Miller was assigned to the claimant because she had difficulty with receiving contradictory instructions for completing an assignment after she began working remotely.

From October 2020 to November 3, 2020, the claimant's quality metric remained roughly the same, but she improved in her productivity metric by 11% to 12%. The claimant maintains it was difficult to raise the performance metrics noticeably in such a short period of time. She would have needed two or three months to raise it back to the 85% level. She was also assigned smaller orders during this period, which made it more difficult to improve her productivity because with larger orders an employee could get in the flow of doing the same type of task.

On November 3, 2020, Mr. Packer informed the claimant of her termination. Mr. Packer explained the claimant's quality and productivity percentages were too low. Mr. Packer did not accuse the claimant of intentionally performing poorly or laziness.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant 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).

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).

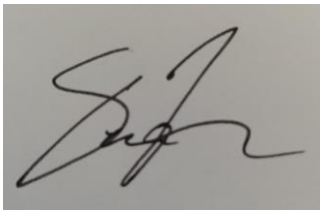
In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability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

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the

employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986). While the claimant concedes her performance metrics were higher at an earlier period in time, the record establishes there were extenuating circumstances that explain why her performance was lower at the time of her termination. Her performance also improved shortly before her termination. Such circumstances run counter to the conclusion the claimant intentionally performed poorly. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

DECISION:

The December 31, 2020, (reference 01) unemployment insurance decision is reversed. The claimant 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.



Sean M. Nelson
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March 12, 2021
Decision Dated and Mailed

smn/mh