

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAKAYLA IVY
Claimant

APPEAL 21A-UI-12068-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IMAGINE THE POSSIBILITIES INC
Employer

**OC: 03/14/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On April 30, 2021, claimant, ShaKayla Ivy, filed an appeal from the April 26, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that the employer, Imagine the Possibilities, Inc., discharged claimant for failure to follow directions in the performance of her job. The parties were properly notified about the hearing held by telephone on July 23, 2021. The claimant participated personally. The employer did not participate.

ISSUE:

Did the employer discharge claimant for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a direct support personnel beginning on October 16, 2016, and was separated from employment on March 16, 2021, when she was discharged.

On March 16, 2021, claimant's supervisor, Annie, and an HR representative called claimant and informed her that her employment was being terminated because she failed to inform on-call when documentation was not submitted in late January 2021. Claimant explains that, at the time, she was grieving a recent and sudden death in her family, and the employer was aware of this. She acknowledged she did not submit the paperwork at the end of her shift, and did not inform on-call that she failed to do so. However, the following day, she was coming in for a double shift and intended to submit the documentation at that time. Claimant had been warned about the submission of documentation in approximately October or November 2020, but she was never explicitly warned that her job would be in jeopardy if she engaged in the same conduct in the future. At the time of her termination, claimant was not aware that her job was in jeopardy.

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 § 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(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.

A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." Where an employer gives seven days' notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be

considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011).

The conduct that led to claimant's discharge occurred in January 2021, while her discharge occurred in March 2021. The final act of alleged misconduct was not sufficiently current to constitute a current act of misconduct. It is not disqualifying based on the requirement that it be current. Benefits are allowed.

DECISION:

The April 26, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

August 03, 2021
Decision Dated and Mailed

ar/ol