

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRYSTLE FOX
Claimant

APPEAL 20A-UI-14241-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OAK VIEW FARMS LLC
Employer

OC: 03/15/20
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed an appeal from the October 28, 2020, (reference 02) unemployment insurance decision that allowed benefits based upon the determination that the claimant was discharged but not for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephone hearing was held on January 8, 2021. The claimant did not participate. The employer participated through human resources generalist Ryan Larkin. Employer Exhibits A-E were admitted into the record. The administrative law judge took official notice of the administrative file.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?
Is claimant eligible for Federal Pandemic Unemployment Compensation (FPUC)?

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 livestock technician at Oak View Farms, LLC from August 15, 2018, until her discharge on July 9, 2020.

Employer has a written policy regarding company vehicles which provides: "All vehicles will be operated in strict accordance with motor vehicle laws and the driver will be responsible for all violations YOU ARE EXPECTED TO DRIVE IN A SAFE AND DEFENSIVE MANNER AT ALL TIMES, AND YOU MUST WEAR YOUR SEATBELT AT ALL TIMES" (Employer Exhibit A). Violation of the company vehicle rules can result in disciplinary action up to and including termination. Claimant was aware of the policy.

On June 29, 2020, claimant was involved in an accident while driving a company van to deliver product to customers. Claimant notified employer of the accident and employer conducted an investigation. The GPS system in the vehicle confirmed claimant had been driving at speeds over sixteen miles per hour on 45 occasions on the day of the accident. (Employer Exhibit B). At the time of the accident, the vehicle was travelling at 63 miles per hour in a 55 mile per hour zone, and five minutes prior to the accident claimant was travelling at 70 miles per hour. (Employer Exhibit C). Claimant did not reduce her speed in time for a vehicle that was slowed to make a left-hand turn and rear-ended the vehicle. Claimant and the company vehicle ended up in a ditch. She was cited for failing to reduce speed. (Employer Exhibit D). When employer asked claimant about the accident, she could not recall any details about it. Claimant did recall she was not wearing her seatbelt. The passengers in the other vehicle suffered injuries requiring medical attention, as did claimant.

The accident caused approximately \$15,000.00 in damage to the company vehicle. The employer determined the accident was preventable and due to the magnitude of the accident, moved to immediate discharge rather than suspension or a lesser penalty.

The administrative record reflects that the claimant has received \$3,612.00 in regular unemployment insurance benefits since she reactivated her claim on August 2, 2020, for the twenty-one weeks ending December 26, 2020. Claimant has not received FPUC benefits since reactivating her claim on August 2, 2020. Ryan Larkin, human resources generalist, participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying misconduct.

Iowa unemployment insurance law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

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).

The employer has the burden of proof in establishing disqualifying job related 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 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 undisputed evidence is claimant was discharged for a single accident in which claimant's van failed to slow down in time for a turning vehicle and rear-ended that vehicle and ended up in a ditch. The result of the accident was not only the claimant's injury, but also the injuries of the passengers in the other vehicle, and over \$15,000.00 in property damage. At issue is not whether the accident occurred, but whether claimant's conduct leading to the accident would meet the definition of misconduct for purposes of unemployment insurance eligibility.

Disqualification for a single misconduct incident must be a deliberate violation or disregard of standards of behavior which employer has a right to expect. *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). The undisputed evidence is that claimant was speeding immediately prior to the accident. This was confirmed by the GPS system in employer's vehicle, which clocked the claimant going between 63 and 70 miles per hour in a 55 miles per hour zone just prior to the accident. The claimant admitted to not wearing a seatbelt. The claimant's conduct of operating a company van, fifteen miles over the speed limit, and not wearing a safety seatbelt were purposeful choices, and contrary to the standards the employer has a right to expect of its employees. Based on the evidence presented, the administrative law judge concludes the claimant's operating of the employer's vehicle was in violation of at least two state laws. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning. Benefits are denied.

Iowa Code section 96.3(7)a, b, as amended in 2008, provides:

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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or

adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(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.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Iowa Admin. Code r. 871-24.10(1) 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.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, if the overpayment is

based on a reversal of an allowance of benefits due to a separation, the overpayment will not be recovered if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview.

In this case, the claimant has received \$3,612.00 in regular unemployment insurance benefits effective August 2, 2020, but she was not eligible for those benefits. The employer participated in the fact-finding interview. Since the employer participated in the fact-finding interview, the claimant is obligated to repay to the agency the benefits she received and the employer's account shall not be charged.

PL116-136, Sec. 2104 provides, in relevant part:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

...

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

...

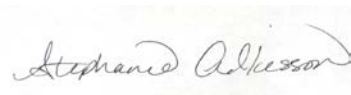
(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

The claimant has been disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation. Claimant did not receive FPUC benefits after reactivating her claim on August 2, 2020.

DECISION:

The October 28, 2020, reference 02, unemployment insurance decision is reversed. The claimant's separation was not attributable to the employer. Benefits are withheld until she works and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The claimant has been overpaid \$3,182.00 in regular unemployment insurance benefits, and she is obligated to repay the agency those benefits because the employer participated in the fact-finding interview and its account shall not be charged.



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

January 28, 2021
Decision Dated and Mailed

sa/scn

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.