

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MEGAN GETZ
Claimant

IOWA DONOR NETWORK
Employer

APPEAL 21A-UI-08420-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/28/21
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Megan Getz, filed an appeal from the March 24, 2021, (reference 01) unemployment insurance decision that denied benefits based upon being discharged from work for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on June 8, 2021, at 9:00 a.m. The claimant participated and testified. The employer did not participate.

ISSUE:

Was the claimant discharged for disqualifying 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 tissue recovery coordinator from January 6, 2020, until she was separated from employment on March 1, 2021, when she was terminated. The claimant's immediate supervisor was Tissue Recovery Manager Julie Duncan. The claimant worked a rotating night shift three days on three days off schedule. The employer is in the business of removing tissue and bone from cadavers for use in organ donation.

The employer has an employee handbook which is accessible through using its internal network. The claimant is not sure if the employer had a policy in its employee handbook regarding use of proper personal protective equipment. However, the claimant is generally aware that employees were to wear disposal scrubs to perform their duties.

In the first or second week of January 2021, the claimant was cleaning the area in which cadavers typically were worked on. There were not any cadavers or tissue removed them in the area at the time, so the claimant did not wear her disposable scrubs, but she did put a gown over her sweat pants and tee shirt. The claimant believes the employer became aware of this infraction in the week following its occurrence, but she conceded she is not aware how the employer became aware.

On March 1, 2021, Tissue Recovery Director Julie Triple terminated the claimant over a video call. The claimant was informed she was being terminated for wearing inadequate personal protective equipment while performing her duties in the first or second week of January 2021.

The claimant had not been formally disciplined regarding this rule or any other rule.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to non-disqualifying conduct.

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

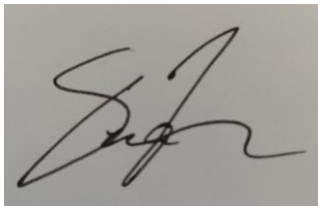
Iowa Admin. Code r.871-24.32(8) provides:

(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.

It is the employer's burden to establish the claimant was discharged for work-related misconduct. The employer has not met its burden in this case because the act the claimant was discharged for was not a current act. For this fact alone, the claimant is entitled to benefits. Benefits are granted.

DECISION:

The March 24, 2021, reference 01, unemployment insurance decision is reversed. The claimant was discharged for non-disqualifying conduct. Benefits are granted, provided she is otherwise eligible.



Sean M. Nelson
Administrative Law Judge
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June 21, 2021
Decision Dated and Mailed

smn/mh