

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRITTANY A FISHER**  
Claimant

**APPEAL 20A-UI-02244-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 02/09/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

**STATEMENT OF THE CASE:**

The claimant/appellant, Brittany A. Fisher, established a claim for unemployment insurance benefits with an effective date of February 9, 2020. She filed an appeal from the March 4, 2020 (reference 01) unemployment insurance decision that denied benefits based upon separation from employment. A notice of hearing was mailed to both parties on March 13, 2020 for a telephone hearing on March 25, 2020. On March 17, 2020, the claimant, through her attorney, sent the employer, Hy-Vee Inc., interrogatories and document requests. The March 25, 2020 telephone hearing was postponed and a new notice was mailed on March 25, 2020 for an April 24, 2020 telephone hearing.

The claimant attempted to contact the employer on April 11, 2020 by letter, due to no response from the employer. On April 24, 2020, a pre-hearing conference was held in lieu of the scheduled hearing time. The claimant appeared personally and with her attorney, Harley Erbe. The employer did not respond to the notice of hearing and did not attend. The claimant requested a continuance to allow the employer to respond to the outstanding discovery. A motion to compel was also made verbally at the time, and in writing.

A pre-hearing conference was held on May 11, 2020 to address the motion to compel. Harley Erbe participated. On May 13, 2020, an order was mailed to both parties, directing the employer to provide responses to the claimant's discovery or face possible sanctions, including exclusion from the hearing. The employer responded by notifying the Appeals Bureau on May 20, 2020 that it would not be participating in the scheduled hearing scheduled for May 22, 2020.

On May 22, 2020, a telephone hearing was held. The claimant participated personally and was represented by Harley Erbe, attorney at law. The employer did not participate. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Is the claimant overpaid benefits?

Is the claimant eligible for Federal Pandemic Unemployment Compensation?

**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 software developer and was separated from employment on October 15, 2019, when she was discharged. At the time of discharge, she was told it was for unsatisfactory performance.

The claimant worked for the employer since 2012. In the claimant's final month of employment, she was put on two performance improvement plans (PIPs). She stated each addressed several issues of needing improvement. There were no deadlines contained within the PIPs regarding tasks the claimant must complete by a certain date or any deadline given to her. The claimant denied any known incident taking place after the PIPs were issued until the day of her discharge. She stated she was surprised and had been working to the best of her ability. On October 15, 2019, she was pulled out of a meeting and told she had been fired. No details were given and the employer would not elaborate when the claimant asked for information. The employer did not participate in the hearing to furnish refute the claimant's evidence.

Despite being denied benefits at initial fact-finding, the decision was made by Iowa Workforce Development to release funds of claimants while their appeals were pending due to the backlog in appeals caused by the recent COVID 19 outbreak. Claimant was one of the individuals whose funds were released pending appeal. The administrative record shows, claimant filed for and received a total of \$5,291.00 in unemployment insurance benefits for the weeks between February 9, 2020 and April 25, 2020.

The claimant also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). Claimant received \$2,400 in federal benefits for the six-week period ending April 25, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa 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 Administrative Code rule 871-24.32(1)a provides:

"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(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). 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).

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.

The employer has failed to meet its burden of proof in establishing a current act of disqualifying job-related misconduct. The undisputed evidence is the claimant was placed on two performance improvement plans in her final month of employment. Reasonably, she knew her job was in jeopardy. However, the claimant credibly denied knowledge of any final incident which occurred after the PIPs were issued until she was discharged. When she pressed the employer to provide more information about her discharge, it refused. The employer did not participate in the hearing to refute the claimant's evidence or establish the final, current act, which led to its decision to discharge her.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated

reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to a final or current act of job related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

Because the claimant is allowed benefits, she has not been overpaid benefits. She is also eligible for Federal Pandemic Unemployment Compensation pursuant to PL116-136, Sec. 2104. (The employer is not chargeable for any federal benefits, and is only chargeable for regular unemployment insurance benefits.)

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

**DECISION:**

The unemployment insurance decision dated the March 4, 2020 (reference 01) is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The claimant has not been overpaid benefits, and is eligible for FPUC, provided she meets all other requirements.



---

Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

May 26, 2020  
Decision Dated and Mailed

jlb/mh