

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANICE D BILDSTEIN
Claimant

APPEAL 22A-UI-04725-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANIMAL HEALTH INTERNATIONAL INC
Employer

**OC: 01/16/22
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 7, 2022 (reference 01) unemployment insurance decision that denied benefits to claimant. The parties were properly notified of the hearing. A telephone hearing was held on April 14, 2022. The claimant, Janice Bildstein and Donald Bildstein, participated personally. The employer, Animal Health International Inc., did not participate. Claimant's Exhibit A was admitted into the record.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
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 began working for the company on August 19, 2013 as a full time retail sales worker. The claimant's immediate supervisor was Linda Boeckenstedt. The last day claimant physically worked for the company was June 2021. Claimant was on a medical leave beginning August 20, 2021. Her Coverage under FMLA was exhausted on December 5, 2021. Claimant was sent an overnight letter that was put in a door that the claimant does not use regularly. The letter was dated January 7, 2022 but because the claimant did not check the door regularly, she did not find the letter until January 12, 2022. The letter stated that the claimant's leave of absence was approved through November 8, 2021. Coverage under FMLA was exhausted on December 5, 2021. Any paid medical leave that claimant required beyond November 8, 2021 had to be approved after further medical documentation was provided establishing the need for further extended leave. The letter stated the claimant had not provided the further documentation and had not provided the documentation required for further leave. No further leave paid or unpaid was available. Since the claimant had exhausted all leave and was unable to return to work, her employment was terminated. The claimant's doctor did not release her back to work until January 20, 2022. She had filled out all the papers that were standard had sent to her and stayed in communication with her manager, Linda Bockenstedt. The claimant told Ms. Bockenstedt in telephone calls and in person when she was expected to return and

when her doctor appointments were scheduled. On November 28, 2021 the claimant spoke with Linda Bockenstedt and stated that her mother had just passed away. At the claimant's mother's funeral, Ms. Bockenstedt told the claimant's husband that she expected the claimant to return to work on January 20, 2022 but wished she could return to work earlier because Ms. Bockenstedt would be gone on vacation and needed the help. Claimant communicated with her supervisor every other week between November 8, 2021 and January 7, 2022 about the status of her medical condition. The claimant provided paperwork on January 14, 2022 that she was being released back to work on January 20, 2022.

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. Benefits are allowed.

As a preliminary matter, the administrative law judge finds that the Claimant did not quit. Claimant was discharged from employment.

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(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 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

In this case, the employer provided no details to the reason of the claimant's discharge from employment. The claimant testified that she notified the employer of all her doctor appointments and kept the employer informed of her medical status. She stayed in contact with her employer through Ms. Bockensteadt because she intended on returning to work once she was released by her doctor on January 20, 2022. This is not misconduct.

Further, this conversation occurred during a meeting that was several days prior to the claimant's date of discharge. A claimant cannot be discharged for a past act of misconduct.

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

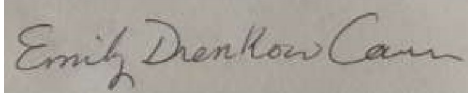
(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The purpose of this rule is to assure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises. For example, an employer may not convert a lay off into a termination for misconduct by relying on past acts. *Milligan v. EAB*, 802 N.W.2d 238 (Table)(Iowa App. June 15, 2011).

The employer has failed to meet its burden of proof in establishing a current act of disqualifying job-related misconduct. As such, benefits are allowed. Because benefits are allowed, the issues of overpayment and chargeability are moot.

DECISION:

The February 7, 2022 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.



Emily Drenkow Carr
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May 2, 2022
Decision Dated and Mailed

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