

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERRY WALLACE
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 20A-UI-09351-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2) – Discharge Due to Misconduct

STATEMENT OF THE CASE:

Claimant Terry Wallace filed an appeal from a July 28, 2020 (reference 01) unemployment insurance decision that denied benefits based upon her discharge from employment by Casey's Marketing Company ("Casey's"). Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for September 17, 2020. Wallace and her daughter, Erin Wallace, appeared and testified. Amy Angell appeared and testified on behalf of Casey's. I took administrative notice of the claimant's unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

On July 10, 2009, Wallace commenced full-time employment with Casey's as a nighttime kitchen/pizza maker. Troy Williams was her immediate supervisor the last day she worked. Angell was the store manager.

During the month of April, Wallace was on furlough from Casey's. Wallace has COPD. Wallace returned to Casey's on May 3, 2020.

Wallace continued to work for Casey's during the month of May. Wallace has a difficult time breathing with a mask due to her COPD and she did not wear a mask that month. On June 2, 2020, Wallace went to work at 4:00 p.m. for her regular scheduled shift. Williams told her she needed to wear a mask as part of her uniform. Wallace told Williams she has COPD and that she could not wear a mask. Williams told her a mask was required. Wallace left work and went to her daughter's home.

When Wallace reached her daughter, Erin's home, she and her daughter called Angell around 4:30 p.m. Wallace and her daughter informed Angell Wallace has COPD and that she could not work wearing a mask. Angell told Wallace and her daughter Casey has a mask rule. Wallace

and her daughter asked for a copy of the rule. Angell told Wallace she could provide a doctor's note excusing her from wearing a mask. Wallace and her daughter testified Angell told them Wallace needed to provide the note that day or she would be terminated.

The next day Wallace and her daughter drove to Casey's and obtained a copy of the rule. Wallace testified the rule is dated May 8, 2020. Wallace testified the rule did not provide that she could obtain a doctor's note excusing her from the mask requirement. Wallace reported she would have been willing to wear a face shield, but not a mask because she cannot breathe with a mask as a result of her COPD. Wallace denied receiving a copy of the rule before June 3, 2020.

Angell testified Casey's adopted a written rule on April 20, 2020, requiring employees to wear a mask as part of the uniform. Angell reported the rule stated that an employee could provide a doctor's note excusing the employee from the mask requirement due to a health condition within two weeks of April 20, 2020. She stated she posted the rule in two places in the store. Wallace testified she was not provided with a copy of the rule at work and the copy she received from Angell on June 3, 2020, was dated May 8, 2020, and it said nothing about obtaining a doctor's note to be excused from the mask requirement. Wallace did not return to work until May 3, 2020 after her furlough in April. Wallace testified she worked until June 2, 2020, for Casey's and during that time no supervisor told her she needed to wear a mask.

Angell avers Wallace voluntarily quit her job. Wallace testified Casey's discharged her.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides an individual "shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . . If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The Iowa Supreme Court has held a "voluntary quit" means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires "an intention to terminate the employment relationship accompanied by an overt act carrying out the intent." *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

871 Iowa Administrative Code 24.25(21) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. . . . The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

24.25(21) The claimant left because of dissatisfaction with the work environment.

871 Iowa Administrative Code 24.26(4), also provides,

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

24.26(4) The claimant left due to intolerable or detrimental working conditions.

Wallace worked for Casey's from May 3, 2020 until June 1, 2020. She did not wear a mask during that period. No supervisor told her to wear a mask. On June 2, 2020, Williams told Wallace she needed to wear a mask. Wallace replied she cannot breathe when wearing a mask because of her COPD. Williams told her she needed to wear a mask. Wallace left work, went to her daughter's home, and called Angell. Wallace and her daughter testified Angell told Wallace she needed to provide a doctor's note excusing her from the mask requirement that day, or she would be terminated. Angell denies she told them Wallace would be terminated. I do not find Angell's testimony reasonable and consistent with the other evidence I believe. Angell testified the mask requirement went into effect on April 20, 2020. Angell reported employees had two weeks to obtain a doctor's note from April 20, 2020. Wallace testified she was not informed of the rule when she returned to work on May 3, 2020. Wallace read from her copy of the rule during the hearing and reported it was dated May 8, 2020. Wallace testified she worked for a month before a supervisor told her she wanted to wear a mask. Wallace worked full-time for Casey's for many years. I do not find she quit.

Under Iowa Code section 96.5(2)a,

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . .

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 disqualification shall continue 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 Iowa Administrative Code 24.31(1)a, defines the term "misconduct" 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 Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

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.

871 Iowa Administrative Code 24.32(8) also provides:

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.

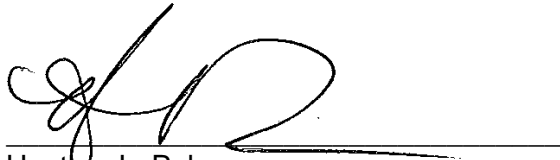
The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982) The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (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, 808 (Iowa Ct. App. 1984) The definition of misconduct in the administrative rule focuses on deliberate, intentional, or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986) Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988) Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986)

Wallace and her daughter testified Angell told Wallace on June 2, 2020, she needed to provide a doctor's note excusing her from the mask requirement that day, or she would be terminated. I do not find Wallace knew her job was in jeopardy or that she needed to wear a mask or produce a medical excuse from wearing a mask before June 2, 2020. Casey's has failed to prove Wallace was discharged for any current act of job-related misconduct that would disqualify her from receiving unemployment benefits. Benefits are allowed.

DECISION:

The July 28, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed. The employer has not established the claimant was discharged for misconduct for a disqualifying reason. Benefits are allowed provided the claimant is otherwise eligible.

A handwritten signature in black ink, appearing to read 'H. Palmer', is written over a horizontal line.

Heather L. Palmer
Administrative Law Judge
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September 22, 2020
Decision Dated and Mailed

hlp/scn