

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**SHAWNA M HALSTED**  
Claimant

**MERCY MEDICAL CENTER-CLINTON INC**  
Employer

**APPEAL 22A-UI-01179-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/31/21  
Claimant: Appellant (1)**

---

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

**STATEMENT OF THE CASE:**

On December 8, 2021, Shawna Halsted (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated December 1, 2021 (reference 01) that disqualified claimant from receiving unemployment insurance benefits following an October 21, 2021 discharge from employer.

A telephone hearing was held on February 3, 2022. The parties were properly notified of the hearing. The claimant participated personally. Mercy Medical Center-Clinton Inc (employer/respondent) participated by HR Colleague Relations Partner Lexie Hammond and was represented by Agent Michael Baughman.

Employer's Exhibits 1-3G were admitted. Official notice was taken of the administrative record.

**ISSUES:**

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on July 10, 2017. Claimant was a full-time employee on the CNA Resource Team. In this position claimant regularly had direct contact with ill and medically-vulnerable patients. Claimant's immediate supervisor was Lori Iben. Claimant was discharged by Ms. Hammond on October 21, 2021 due to failing to comply with employer's COVID-19 Prevention Policy.

The policy became effective on July 8, 2021. It required employees in claimant's job classification to be fully vaccinated against COVID-19 by October 8, 2021. Employees could alternatively request a medical or religious exemption by submitting such a request by August 20, 2021. The policy provides that non-compliance will result in disciplinary action up to and including

termination. The policy was widely distributed to employees at the time it became effective. Claimant was aware of the general requirements of the policy, as it was a major topic of conversation among coworkers. However, she did not review it closely. This is because claimant typically only skimmed her work-related emails.

Claimant took no steps to comply with the policy until approximately September 8, 2021. On that date she contacted Ms. Iben via email and indicated she was unwilling to be vaccinated. Claimant also wrote in the email that she did not request an exemption by August 20, 2021 and acknowledged it was her own fault for failing to do so. Ms. Iben told claimant she could still apply for an exemption but she doubted it would be approved since the deadline had passed. Claimant did not request an exemption at that time.

Ms. Hammond sent claimant an email on September 29, 2021, notifying her of her non-compliance with the COVID-19 Prevention Policy and offering a two-week grace period, until October 15, 2021, to comply with the policy. Claimant did not respond to the email or take steps to request an exemption or become vaccinated. She was accordingly discharged by Ms. Hammond on October 21, 2021, for non-compliance with the policy after being warned.

Claimant did not provide information at hearing that would appear to support an exemption. Claimant had personal concerns about being vaccinated due to being pregnant but was not advised by a medical professional to not be vaccinated. She testified that being vaccinated generally conflicted with her religious beliefs but it was unclear what specific religious belief it conflicted with.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the decision dated December 1, 2021 (reference 01) that disqualified claimant from receiving unemployment insurance benefits following an October 21, 2021 discharge from employer is AFFIRMED.

Iowa Code section 96.5(2)a provides:

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.

Iowa Admin. Code r. 871-24.32 provides in relevant part:

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.

On October 29, 2021, Gov. Reynolds signed into law House File 902, which among other things amended Iowa Code Chapter 96 to include a new section 96.5A. Section 5 of House File 902 provided that the act would take effect upon enactment. The new section 96.5A provides:

Notwithstanding any other provision of this chapter to the contrary, an individual who is discharged from employment for refusing to receive a vaccination against COVID-19, as defined in section 686D.2, shall not be disqualified for benefits on account of such discharge.

There is a strong presumption in American jurisprudence against legislation being applied retroactively. "The principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal." *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 855 (1990) (SCALIA, J. concurring). This is in large part because "elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly..." *Landgraf v. USI Film Prod.*, 511 U.S. 244, 265 (1994).

The administrative law judge finds it would be fundamentally unfair and inconsistent with widely-accepted legal principles to apply the new section 96.5A to the conduct at issue here, which occurred prior to the law becoming effective on October 29, 2021. Employer may have taken a different course of action had the law been in effect at the time of the discharge. As such, the administrative law judge finds the new section 96.5A should not be applied to the conduct at issue here and instead Iowa Code 96.5 as it existed at the time of the conduct will be applied.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The administrative law judge finds employer has carried its burden of proving claimant is disqualified from unemployment insurance benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Claimant was aware of employer's COVID-19 Prevention Policy but chose not to comply with it by obtaining an exemption or becoming vaccinated. Employer's policy was reasonable given the nature of claimant's employment in the healthcare field and her regular and direct contact with ill and medically-vulnerable patients. Claimant chose not to comply with this reasonable policy despite having notice and ample opportunity to do so, including a grace period beyond what the policy provided. Claimant's failure to comply with the policy was a breach of the duties and obligations arising out of claimant's contract of employment and a disregard of the standards of behavior employer had the right to expect of her.

The administrative law judge wishes to emphasize that becoming vaccinated was not the sole way claimant could have complied with the policy. Claimant also could have complied with the policy by seeking and being granted a medical or religious exemption. While it is unclear whether such an exemption would have been granted, claimant did not even attempt to comply with the policy by requesting one. This was due to claimant failing to take reasonable steps to ensure she was aware of employer's policies, including reading work-related emails and inquiring as to policy changes that may have been unclear to her, and not due to any fault of employer.

**DECISION:**

The decision dated December 1, 2021 (reference 01) that disqualified claimant from receiving unemployment insurance benefits following an October 21, 2021 discharge from employer is AFFIRMED. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



---

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

February 22, 2022  
Decision Dated and Mailed

abd/abd