

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THEODORE RINGGENBERG
Claimant

HAVERKAMP PROPERTIES
Employer

APPEAL 21A-UI-18783-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/30/21
Claimant: Respondent (4)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Haverkamp Properties, the employer/appellant, filed an appeal from the August 11, 2021, (reference 01) unemployment insurance decision that allowed benefits based on a May 28, 2021 dismissal from work. The parties were properly notified of the hearing. A telephone hearing was held on November 2, 2021. The employer participated through Robin Ver Helst, human resources/payroll administrator, and Tanya Betts, controller. Mr. Ringgenberg participated and testified. The administrative law judge took official notice of the administrative record. Employer's Exhibit 1 was admitted into evidence.

ISSUES:

Was Mr. Ringgenberg discharged for disqualifying job-related misconduct or did he voluntarily quit without good cause attributable to the employer?

Was Mr. Ringgenberg overpaid benefits?

If so, should he repay the benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Ringgenberg began working for the employer on August 18, 2014. He worked as a full-time property accountant. His employment ended on May 28, 2021 when he and the employer signed a Severance Agreement.

The Agreement provides that Mr. Ringgenberg's employment will end on May 28, 2021, and in exchange, the employer will pay Mr. Ringgenberg a severance bonus in the gross amount of \$4,591.00, which was equivalent to Mr. Ringgenberg's then-current pay rate, from the end of his employment through July 9, 2021. The employer paid Mr. Ringgenberg the severance bonus every two weeks for the six-week period from May 29, 2021 through July 9, 2021.

Mr. Ringgenberg's weekly severance bonus amount was \$765.16. Mr. Ringgenberg's unemployment insurance weekly benefit amount is \$487.00.

The employer disputes Mr. Ringgenberg's eligibility for benefits only from the end of his employment through July 9, 2021 when the employer was paying him the severance bonus. The employer does not dispute Mr. Ringgenberg's eligibility for benefits as of July 10, 2021.

Mr. Ringgenberg reported the severance bonus payments as vacation pay between May 30, 2021 and July 10, 2021. Mr. Ringgenberg has received \$0.00 in REGULAR unemployment insurance (UI) benefits between May 30, 2021 and July 10, 2021. Mr. Ringgenberg received \$0.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits between May 30, 2021 and July 10, 2021. The employer did not participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Ringgenberg was discharged from employment for no disqualifying reason, but Mr. Ringgenberg is not unemployed until July 10, 2021.

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).

Iowa Code § 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dept 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 Dept of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dept of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if

the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case, the employer ended Mr. Ringgenberg's employment, but has not established misconduct. In fact, the employer does not dispute Mr. Ringgenberg's eligibility as of July 10, 2021. Although the employer ended Mr. Ringgenberg's employment for no disqualifying reason, the employer continued to pay Mr. Ringgenberg as if he was still employed from May 29, 2021 through July 9, 2021. During this time period, Mr. Ringgenberg was receiving more than \$502.00 (his \$487.00 weekly benefit amount plus \$15.00) per week from the employer. As such, Mr. Ringgenberg is ineligible for benefits from May 28, 2021 through July 9, 2021. Benefits are denied from May 28, 2021 through July 9, 2021. Benefits are allowed as of July 10, 2021.

Since Mr. Ringgenberg received \$0.00 in REGULAR unemployment insurance (UI) benefits, and \$0.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits between May 30, 2021 and July 10, 2021, he is not overpaid during this time period.

Since Mr. Ringgenberg is eligible for benefits as of July 10, 2021, the issues of repayment and chargeability are moot as of July 10, 2021.

DECISION:

The August 11, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant, Haverkamp Properties. Mr. Ringgenberg was discharged from employment for no disqualifying reason. Benefits are denied from May 28, 2021 through July 9, 2021. Benefits are allowed as of July 10, 2021, provided Mr. Ringgenberg is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Mr. Ringgenberg is not overpaid REGULAR unemployment insurance (UI) benefits, or Federal Pandemic Unemployment Compensation (FPUC) benefits.



Daniel Zeno
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December 1, 2021
Decision Dated and Mailed

dz/scn