

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KEIDRICK O MARTIN**  
Claimant

**BAKER'S PRIDE INC**  
Employer

**APPEAL 19A-UI-07896-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/15/19**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the October 2, 2019 (reference 01) unemployment insurance decision that allowed benefits based upon claimant's separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on October 29, 2019. The claimant, Keidrick O. Martin, participated personally. The employer, Baker's Pride Inc., participated through witnesses Kimberly Lewis, Adrian Campbell and Laurey Gray. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Was the claimant discharged for a current act of disqualifying job-related misconduct?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

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

Claimant was employed full-time as a production laborer break person. His employment began on October 13, 2018 and ended on September 16, 2019. As a break person, claimant's job duties included filling in for other worker's while they took their break and lunch periods. Claimant's direct supervisor was Adrian Campbell.

On May 23, 2019, claimant walked off the job. He received a written warning as discipline for walking off the job. In his written warning he noted a comment stating that he would like to be transferred from break person to relief person. A relief person's job duties including filling in for a worker if they called off from work. No further discipline was issued after the May 2019 written warning and prior to his discharge from work. Approximately one week prior to his discharge, claimant was moved to work in the pack-out area. He completed all job duties as assigned. On

September 16, 2019, Mr. Campbell presented the claimant with paperwork that stated his new position would be in the pack-out area and that his rate of pay would be reduced from \$14.25 to \$11.75 per hour. Claimant refused to sign the paperwork without having his legal counsel review it first. Claimant was then discharged and escorted out of the building. The employer offered several reasons for the demotion, including the fact that claimant requested to be transferred from the break person position, that he had poor job performance, and as additional discipline to his May 23, 2019 incident of walking off the job.

Claimant has received unemployment insurance benefits of \$1,604.00 for four weeks between September 15, 2019 and October 12, 2019. The employer participated in the fact-finding interview by providing documentation regarding the discharge to the interviewer. The employer did not provide a witness by telephone for the interview.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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.

As such, 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). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

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). Employee misconduct must be a current act in order to deny unemployment benefits. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). This incident must occur within a reasonable period from the discharge date. An employer cannot on the one hand argue that the conduct was so egregious that it warranted discharge instead of a lesser penalty, but then allow the claimant to continue working for several months before separating from employment. An employer who sits with the knowledge of an act of misconduct and allows the individual continuing employment for an unreasonable period of work does not terminate for a current act.

In this case, there was no current act of misconduct after the May 23, 2019 incident which would rise to the level of intentional misconduct. Further, claimant had already received discipline for the May 23, 2019 incident by virtue of a written warning. Claimant never requested to be demoted to pack-out and there was no evidence of poor job performance following the May 23, 2019 incident. Without a current act, the employer has failed to meet its burden of proof of establishing disqualifying job-related misconduct pursuant to Iowa Admin. Code r. 24.32(8). As

such, benefits are allowed, provided the claimant is otherwise eligible. The issue of overpayment of benefits is moot. The employer may be charged for benefits paid.

**DECISION:**

The October 2, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The employer may be charged for benefits paid.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn