

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**BRANDY J TRENT**  
Claimant

**APPEAL NO. 18A-UI-09177-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MASON CITY PR INC**  
Employer

**OC: 09/10/17**  
**Claimant: Respondent (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code Section 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 23, 2018, reference 04, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant had been discharged on August 2, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on September 21, 2018. Claimant Brandy Trent did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participated. Patrick Martini represented the employer and presented additional testimony through Molly Schmeichel. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1, 2 and 3 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant has been overpaid benefits.

Whether the claimant must repay overpaid benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer owns and operates a Pizza Ranch restaurant in Mason City. The claimant was employed as the full-time General Manager from February 2018 until August 2, 2018, when the

employer discharged the claimant in response to a pattern of negligence and verbal abuse of employees that had a significant and adverse impact on the employer's business. The claimant's conduct included multiple and substantial health code violations and repeated failure to resolve those issues despite warnings and guidance from the state health inspector. Due to the claimant's habit of verbally abusing employees, the employer's business suffered a substantially increased employee turn-over during the claimant's tenure. The negligence and conduct issues continued up to the August 2, 2018 discharge date.

The claimant established an "additional claim" for benefits that was effective July 29, 2018, based on a September 10, 2017 original claim and received \$1,137.00 in benefits for the period of July 29, 2018 through August 25, 2018. The claimant then established a new original claim for benefits that was effective September 10, 2018, and received \$674.00 in benefits for the two-week period of September 9-22, 2018. The employer is a base period employer for purposes of the September 9, 2018 original claim. Iowa Workforce Development held a fact-finding interview on August 21, 2018. The employer appeared for and participated in the fact-finding interview.

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

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(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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Administrative Code rule 871-24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes a discharge for misconduct in connection with the employment. The misconduct included a pattern of verbally abusing employees that resulted in a high employee turnover. The misconduct included ongoing and significant health code violations and failure to take reasonable and appropriate steps to resolve those issues. The pattern of conduct demonstrated a willful and wanton disregard of the employer's interests. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received \$1,137.00 in benefits for the period of July 29, 2018 through August 25, 2018 and an additional \$674.00 in benefits for the two-week period of September 9-22, 2018. This decision disqualifies the claimant for those benefits. The benefits constitute an overpayment. The employer participated in the fact-finding interview. The claimant must repay the overpaid benefits. The employer's account shall be relieved of charges, including charges for benefits already paid to the claimant.

**DECISION:**

The August 23, 2018, reference 04, decision is reversed. The claimant was discharged on August 2, 2018 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$1,137.00 in benefits for the period of July 29, 2018 through August 25, 2018 and additional \$674.00 in benefits for the two-week period of September 9-22, 2018. The claimant must repay the overpaid benefits. The employer's account shall be relieved of charges, including charges for benefits already paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs