

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAIME CHINN
Claimant

CARE INITIATIVES
Employer

APPEAL 21A-UI-06225-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/13/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 9, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the finding she was discharged due to willful work-related misconduct. The parties were properly notified of the hearing. A telephone hearing was held on May 6, 2021. The claimant participated. The employer participated through Appellate Hearing Representative Jacqueline Jones and Administrator Tanner Mackey.

ISSUE:

Whether the claimant's separation is disqualifying?

FINDINGS OF FACT:

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

The claimant was employed full time as a program coordinator from February 15, 2017, until this employment ended on December 9, 2020, when she was discharged. Her immediate supervisor was Tanner Mackey.

The employer has a Covid19 screening protocol which requires employees to truthfully answer screening questions regarding their symptoms before entering the building. The reason for the protocol is so staff is properly screened before exposing other staff and patients to Covid19. This protocol was a regular topic in staff meetings. In her position, the claimant was responsible for training subordinates on the parameters of this policy.

On October 22, 2020, the claimant arrived to work and entered the building. The claimant told the nurse performing the screening that she had some sinus pressure from crying the night before. The claimant denied she had any other Covid19 symptoms. Later that day, the claimant tested positive for Covid19.

The claimant was placed on quarantine from October 23, 2020 to November 9, 2020.

On December 9, 2020, the claimant was suspended pending the completion of the investigation into the incident that occurred on October 22, 2020. Mr. Mackey interviewed the claimant who insisted she did not have symptoms prior to receiving the positive Covid19 test results. Mr. Mackey also interviewed various staff and clients who told him that the claimant told them on October 22, 2020, that she was working despite having symptoms.

On December 11, 2020, Mr. Mackey informed the claimant she was being terminated.

The claimant had not been formally disciplined for violating the Covid19 protocol in the past.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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).

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.

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 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

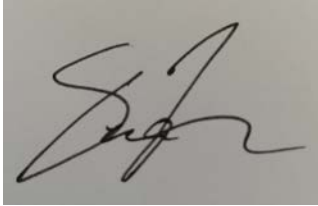
The administrative law judge finds the employer has failed to meet its burden for two reasons.

First, the claimant is not disqualified from benefits because the employer concedes she was not discharged for current misconduct. The employer waited more than a month to even place the claimant on suspension. This fact alone scuttles the employer's chances of making its case that she is disqualified for benefits because it is far too remote to be considered current misconduct under Iowa Admin. Code r. 871 – 24.32(8).

Furthermore, the employer concedes the claimant was not formally disciplined in the past for violating the Covid19 protocol. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

DECISION:

The February 9, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
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May 17, 2021
Decision Dated and Mailed

smn/scn