

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIZABETH A CARLSON MOSHER
Claimant

APPEAL 18A-UI-10331-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLEAR CREEK-AMANA COMM SCH DIST
Employer

**OC: 09/16/18
Claimant: Respondent (1)**

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 filed an appeal from the October 12, 2018 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer did not establish the discharge was for disqualifying misconduct. The parties were properly notified of the hearing. A telephonic hearing was held on November 6, 2018. The claimant, Elizabeth A. Carlson Mosher, participated. The employer, Clear Creek-Amana Community School District, participated through Sue Wilber, HR Director. Employer's Exhibits 1 through 5 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can 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, most recently as a special education associate, from August 23, 2017, until September 21, 2018, when she was discharged for violating the employer's Social Media policy. The employer maintains a Social Media policy for district employees. (Exhibit 1) This policy encourages employees to use common sense when posting online and encourages employees to post with honesty, respect, and consideration. The policy prohibits insulting students, staff, parents, the extended school community, and other school districts. Claimant completed an online training on the Social Media policy. (Exhibit 2)

On September 19 or 20, claimant used her personal Facebook account outside of work to share two memes related to work. The first meme depicted Rafiki from "The Lion King" and referred to a person "connect[ing] with Jesus" before doing "something stupid." Claimant shared this post

and wrote, "I feel this way at work sometimes." (Exhibit 3) The second meme was titled "My four work moods" and depicted Judge Judy rolling her eyes and Judge Judy saying, "Who cares?" (Exhibit 4) On September 21, one of the employer's staff-members brought the two Facebook posts to Principal Mark Moody. Principal Moody reached out to Wilber, and they determined that claimant should be discharged for violating the employer's Social Media policy.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,663.00, since filing a claim with an effective date of September 16, 2018, and a reopened date of September 23, 2018, for the six weeks ending November 3, 2018. The administrative record also establishes that the employer did participate in the fact-finding interview or make a first-hand witness available for rebuttal. Wilber explained that she missed the initial fact-finding call but called back within the time allowed and ultimately spoke to the fact-finder. Wilber asked the fact-finder if she could walk through the exhibits she had submitted and comment on them, and the fact-finder did not allow this to occur.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she 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).

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. 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.

In this case, claimant was discharged for making two Facebook posts on her personal time. While the posts were certainly made in poor judgment, they are not so offensive as to amount to a deliberate disregard of the employer's interests. Claimant had never been warned for violating the Social Media policy in the past, and she was not aware her job was in jeopardy for making the two posts she made prior to September 21. The employer has not met its burden of proving that claimant was discharged from employment for any disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. As claimant's separation is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The October 12, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn