

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ESTHER J HALTERMAN
Claimant

**PRAIRIE MEADOWS RACETRACK &
CASINO**
Employer

APPEAL 21A-UI-17396-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/09/21
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On August 6, 2021, Esther Halterman (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated July 27, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding she was discharged on May 1, 2021 for violation of a known company rule.

A telephone hearing was held on September 29, 2021. The parties were properly notified of the hearing. The claimant participated personally and was represented by Attorney Charles Turner. Prairie Meadows Racetrack & Casino (employer/respondent) participated by HR Director Gina Vitiritto. Official notice was taken of the administrative record.

Claimant requested discovery from employer approximately a week prior to the hearing. Employer had not had sufficient time to respond to the discovery requests prior to the hearing. Claimant opted to proceed with the hearing without discovery responses rather than request the hearing be continued.

ISSUES:

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

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

Claimant worked for employer as a full-time mutual teller in employer's racetrack area. In this position claimant took wagers and paid out winnings. Claimant's first day of employment was January 30, 1989. The last day claimant worked on the job was May 1, 2021. Claimant was discharged on or about May 11, 2021.

The final incident leading to discharge occurred on May 1, 2021. At the end of her shift on that day claimant discovered a variance of \$2,739.10. She immediately reported this to her supervisor. An investigation determined the variance was due to claimant inadvertently paying out a winning ticket twice. This was due to claimant not "clearing" her screen between customers. The machine claimant used for this task at times would pause or freeze when she attempted to clear it, and she believes this is what caused the overpayment in this instance. Claimant had reported this issue to employer on numerous occasions over several years. Claimant was also very busy on the day in question, as it was during the Kentucky Derby. Claimant estimated she conducted over a thousand customer transactions on that date.

Claimant had nine prior variance instances during her over 30 years of work for employer. The most recent occurred on September 20, 2020, when she inadvertently overpaid \$14.30. She received a verbal warning at that time. Employer's policy is that any variance over \$200.00 is grounds for discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated July 27, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding she was discharged on May 1, 2021 for violation of a known company rule is REVERSED.

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 provides in relevant part:

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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The administrative law judge finds employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Claimant conducted over a thousand transactions on the day in question and made a mistake, albeit a costly one. The mistake was likely due in part to issues with the machine she was using. She had not made a similar mistake for over six months and had made only nine such mistakes during her extensive time with employer. As such, the administrative law judge finds the conduct leading to discharge was an inadvertency or ordinary negligence in an isolated instance. This does not rise to the level of disqualifying job-related misconduct.

DECISION:

The decision dated July 27, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding she was discharged on May 1, 2021 for violation of a known company rule is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account is subject to charge.



Andrew B. Duffelmeyer
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September 30, 2021
Decision Dated and Mailed

abd/scn