

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MITCHELL C JOHNSON
Claimant

HYVEE INC
Employer

APPEAL 21A-UI-06444-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/03/21
Claimant: Respondent (1)**

Iowa Admin. Code r. 871-24.32(1)A – Discharge for Misconduct

STATEMENT OF THE CASE:

On March 1, 2021, Hy-Vee Inc. (employer/appellant) filed an appeal from the February 19, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on January 1, 2021 without a showing of misconduct.

A telephone hearing was held on May 10, 2021. The parties were properly notified of the hearing. Mitchell Johnson (claimant/respondent) participated personally and with his mother, Candes Valbey. Employer participated by Store Manager Jason Sheridan. HR Manager Kari Nelson participated as a witness for employer. Employer was represented by Hearing Rep. Barbara Buss.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation 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 assistant night stock manager. Claimant's first day of employment was March 12, 2011. Claimant's immediate supervisor was Sheridan. The last day claimant worked on the job was January 1, 2021. Claimant was discharged by Sheridan on that date.

The sole incident leading to discharge occurred the prior evening, December 31, 2020, New Year's Eve. On that date, claimant's manager directed him to "grab a pizza" and then bring it to the restaurant, where they then cooked it and ate it during a break. Claimant believed his manager was going to pay for the pizza, as he had directed him to take it and in the past employer had on occasion paid for food items on special occasions. Claimant did not inquire as to whether the manager or employer was paying for the pizza or if he should.

Claimant apologized at the time of discharge, explained that he didn't realize the pizza had not been paid for, and offered to pay for it at that time. Claimant's manager was also discharged. Employer's policies require employees to pay for food before it is consumed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the February 19, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on January 1, 2021 without a showing of misconduct is **AFFIRMED**.

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

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.

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).

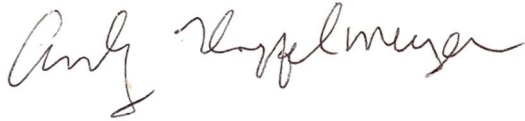
Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions “liberally to carry out its humane and beneficial purpose.” *Bridgestone/Firestone, Inc. v. Emp’t Appeal Bd.*, 570 N.W.2d 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).

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). While claimant would have been well-advised to confirm with his manager who was paying for the pizza before taking it and consuming it, his failure to do so was understandable in the circumstances. It was not his intent to steal from employer. Notably, claimant has no other disciplinary issues which contributed to the decision to discharge. The administrative law judge finds the incident leading to discharge is best characterized as a good-faith error in judgment or discretion rather than a deliberate act or omission against employer’s interests.

Because the separation from employment was not disqualifying, the other issues noticed need not be addressed.

DECISION:

The February 19, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on January 1, 2021 without a showing of misconduct is **AFFIRMED**. Benefits are allowed, provided claimant is otherwise eligible.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 478-3528

May 19, 2021
Decision Dated and Mailed

abd/kmj