

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEITH L MCCARTER
Claimant

NORDSTROM INC
Employer

APPEAL 22A-UI-02325-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/28/21
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On December 28, 2021, Keith McCarter (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated December 21, 2021 (reference 01) that disqualified claimant from receiving unemployment insurance benefits based on a finding that he was discharged due to work-related dishonesty.

A telephone hearing was held on February 16, 2022. The parties were properly notified of the hearing. The parties waived the 10-day notice requirement. The claimant participated personally. Nordstrom Inc (employer/respondent) participated by HR Business Partner Melissa Lenhart and was represented by Hearing Rep. Jennifer Groenwold. Official notice was taken of the administrative record.

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 warehouse associate. Claimant's first day of employment was March 10, 2021. The last day claimant worked on the job was on or about November 6, 2021. Claimant was discharged on November 23, 2021.

Claimant was discharged due to answering a COVID-19 screening question dishonestly. Employees are required to respond to a series of COVID-19 screening questions prior to beginning work each day. These questions are designed to prevent individuals who are or may be positive for COVID-19 from working and thus potentially infecting others. There is a warning at the top of the screening questions that dishonesty in responding may result in discipline up to discharge.

Claimant was absent from work due to illness on November 5, 2021. Claimant felt like he had a cold on that day and was ill enough at that time that it spurred him to take a COVID-19 test. Despite still feeling ill and having taken a COVID-19 test, claimant appeared for work the following day and responded in the negative to a screening question asking if he had any potential COVID-19 symptoms in the past 72 hours.

Claimant got positive COVID-19 results the following day. Employer was notified of these results, which prompted Lenhart to investigate why claimant had answered the screening question in the negative on November 6, 2021. Claimant told Lenhart he responded this way because he did not want to miss work. Claimant was held out of work for two weeks after that time due to his positive COVID-19 status. Claimant ultimately became very ill and had to be hospitalized during this period. Employer notified claimant of his discharge after the two-week quarantine period ended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated December 21, 2021 (reference 01) that disqualified claimant from receiving unemployment insurance benefits based on a finding that he was discharged due to work-related dishonesty is **AFFIRMED**.

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 claimant was intentionally dishonest in his response to the COVID-19 screening question he answered on his last day present at work. Not only was this work-related dishonest and a violation of employer's clear COVID-19 mitigation policy; it also resulted in a health and safety risk to other employees. Employer has therefore 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).

DECISION:

The decision dated December 21, 2021 (reference 01) that disqualified claimant from receiving unemployment insurance benefits based on a finding that he was discharged due to work-related dishonesty is **AFFIRMED**. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
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March 3, 2022
Decision Dated and Mailed

abd/abd