

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAMERON M ZOLNOSKY
Claimant

THRIVE TOGETHER LLC
Employer

APPEAL 20A-UI-04519-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On May 23, 2020, the claimant filed an appeal from the May 14, 2020, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on June 10, 2020. Claimant participated. Employer did not register for the hearing and did not participate. Claimant's Exhibit A was received.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Was claimant overpaid unemployment insurance benefits?

Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in December 2018. Claimant last worked as a part-time server. Claimant was separated from employment on February 1, 2020, when employer discharged his employment.

Employer is an Applebee's Restaurant.

Toward the end of his employment, employer began decreasing the amount of shifts it scheduled for claimant to work.

In January 2020, claimant told front-of-the-house manager, Crystal, his scheduled hours were decreasing. Crystal sounded surprised. Claimant thought Crystal would look into it, but claimant's scheduled hours continued to decrease.

February 1, 2020, was claimant's last day of scheduled work.

Claimant continued to check the schedule throughout February, but was not put on the schedule.

At the end of February 2020, claimant asked fry cook Keilund Steinborn why he was not being scheduled. Steinborn said that claimant's ex-girlfriend, Sydney, was now in charge of making the schedule.

Employer temporarily closed in March 2020, due to the COVID 19 pandemic. Claimant filed a claim for unemployment insurance benefits. He did not participate in the fact finding interview, but received a decision stating that he was denied benefits due to a voluntary resignation.

In May 2020, employer reopened, but again did not schedule claimant to work.

Claimant was not disciplined for any reason prior to being taken off the schedule. Claimant is not aware of any allegations of misconduct.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether claimant resigned or was discharged by employer. The employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In this case, claimant had no intent to quit and took no affirmative action to quit. Instead, employer stopped scheduling claimant hours without explanation. The separation was caused by employer's actions. This case will be analyzed as a discharge.

Iowa Code § 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 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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, there are no allegations that claimant committed misconduct that would result in him being taken off the schedule. Employer failed to establish claimant was discharged for any reason that would disqualify him from receiving unemployment insurance benefits.

Claimant is allowed regular unemployment insurance benefits. Therefore, claimant is also allowed Federal Pandemic Unemployment Compensation and has not been overpaid unemployment insurance benefits. See PL 116-136, Sec. 2104(b).

DECISION:

The May 14, 2020, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

June 24, 2020
Decision Dated and Mailed

cal/mh