

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KARLA K POLDBERG

Claimant

APPEAL 20A-UI-01643-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 01/26/20

Claimant: Respondent (1)

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

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On February 21, 2020, Casey's Marketing Company (employer) filed an appeal from the February 14, 2020 (reference 01) unemployment insurance decision that determined Karla Poldberg (claimant) was eligible to receive unemployment insurance benefits.

A telephone hearing was held on March 11, 2020. The parties were properly notified of the hearing. Employer participated by Store Manager Katrina Crandall. Claimant participated personally.

Employer's Exhibits 1-3 were admitted. Official notice was taken of claimant's payment history on the unemployment insurance system.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits or should employer be charged due to employer participation in fact finding?

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 second assistant manager. Claimant's first day of employment was June 2, 1997. The last day claimant worked on the job was January 30, 2020. Claimant's immediate supervisor was Crandall. Claimant separated from employment on January 30, 2020. Claimant was discharged by Area Supervisor Abigail Harms on that date.

On January 5, 2020, Crandall received a complaint from an employee that claimant's brother was arguing with that employee at the store. In reviewing video of this incident, employer saw claimant's brother – who was not an employee - performing work at the store on that date. Specifically, he was sweeping the floor. This spurred Crandall to review more video.

In reviewing other video, Crandall discovered claimant's brother was also performing work at the store on January 7, 2020. This included sweeping, mopping, and taking garbage out. Then, on the morning of January 11 at approximately 5:00 a.m., Crandall received a video showing claimant's brother shoveling snow at the store. It is unclear when this video was taken. Claimant worked on January 11 from 5:00 a.m. to 2 p.m. Claimant was unaware her brother shoveled snow on that date.

Crandall spoke with claimant the afternoon of January 11 and warned her that she could not allow her brother to perform work at the store. Claimant explained that her brother dropped her off and picked her up from work each day, was protective of her, and was "looking out for her" by doing that work. Crandall did not warn claimant that she may be discharged if she continued to allow her brother to perform work there.

Claimant knew her brother was performing work at the store and that she should not have allowed him to do that. However, she did not believe she would be discharged for allowing it to happen. The Corrective Action Statement documenting claimant's discharge indicates the reason for discharge as being violation of employer's policies on accurate reporting and accounting of hours worked; scheduling and time clock procedures; and honesty and integrity. See Exhibit 1. Claimant did receive these policies. See Exhibit 2. However, these policies do not address an employee allowing someone to perform work at the store without being paid. See Exhibit 3. Employer does not have a specific policy prohibiting an employee from allowing someone to perform work at the store without being paid.

There were no further incidents of claimant's brother working at the store between the January 11 warning and her discharge on January 30, 2020. The reason for the gap between the final incident on January 11 and claimant's discharge on January 30 was because employer wanted Harms to discharge claimant in person rather than having Crandall do it, and Harms was for some reason delayed in doing so. Claimant was not suspended and continued to work during this time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the February 14, 2020 (reference 01) unemployment insurance decision that found claimant eligible for benefits 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.

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).

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's decision to allow her brother to perform work at the store was certainly ill-advised, and claimant generally understood she should not have allowed that. However, she had no reason to believe it would result in discharge, and there was no policy specifically prohibiting it. Furthermore, once she was warned not to allow it moving forward, no further incidents occurred.

Finally, the lapse of time between the final incident leading to discharge and claimant's discharge was nearly three weeks. Claimant was allowed to work during this period. It is incongruous for the employer to on the one hand argue that claimant's conduct was so egregious that it warranted discharge instead of a lesser penalty but then allow the claimant to continue working for nearly three weeks. This also calls into questions whether the January 11 incident constituted a current act of misconduct. In considering all these factors, the administrative law judge cannot find claimant's actions rose to the level of substantial job-related misconduct such that she is disqualified from receiving benefits.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Because the administrative law judge finds claimant is eligible for benefits, these issues need not be addressed.

DECISION:

The February 14, 2020 (reference 01) unemployment insurance decision is AFFIRMED. Claimant is eligible for benefits, provided she meets all other eligibility requirements.

Andrew B. Duffelmeyer
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Decision Dated and Mailed

abd/scn