

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERESA A DRILLING
Claimant

APPEAL 22A-UI-07404-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHAUTAUQUA GUEST HOME
Employer

**OC: 02/20/22
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.5(A) – Vaccine Refusal

STATEMENT OF THE CASE:

On March 18, 2022, Chautauqua Guest Home (employer/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated March 10, 2022 (reference 01) that allowed unemployment insurance benefits based on a finding that claimant was discharged on February 13, 2022 for refusing a vaccine required by employer.

A telephone hearing was held on May 4, 2022. The parties were properly notified of the hearing. Employer participated by Administrator Mary Schupe. Assistant Administrator Misty Hobert participated as a witness for employer. Teresa Drilling (claimant/respondent) participated personally. Her husband, Richard Drilling, participated as a witness.

Claimant’s Exhibit 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was there a disqualifying separation from employment?

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 dietary aide. Claimant’s first day of employment was August 19, 1985. The last day claimant worked on the job was February 10, 2022. Claimant was discharged effective February 13, 2022. Claimant’s separation from employment was not voluntary. She was discharged due to failing to be vaccinated against COVID-19 or be granted a medical or religious exemption as required by employer. This was the sole reason for the discharge. Claimant did not request a religious exemption because she did not have a religious objection to the vaccine. Claimant did not request a medical exemption because her doctor declined to complete the required paperwork.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated March 10, 2022 (reference 01) that allowed unemployment insurance benefits based on a finding that claimant was discharged on February 13, 2022 for refusing a vaccine required by employer 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).

On October 29, 2021, Gov. Reynolds signed into law House File 902, which among other things amended Iowa Code Chapter 96 to include a new section 96.5A. Section 5 of House File 902 provided that the act would take effect upon enactment. The new section 96.5A provides:

Notwithstanding any other provision of this chapter to the contrary, an individual who is discharged from employment for refusing to receive a vaccination against COVID-19, as defined in section 686D.2, shall not be disqualified for benefits on account of such discharge.

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).

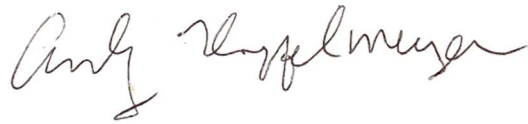
Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d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

Claimant could have complied with employer's policy not only by becoming vaccinated but alternatively by obtaining a medical or religious exemption. However, she did not have a religious objection to the vaccine and her doctor declined to complete the required paperwork for a medical exemption. The administrative law judge finds those exemptions were therefore unavailable to claimant, meaning she could only comply by becoming vaccinated. Claimant chose not to become vaccinated and was discharged as a result. A discharge due to refusing to receive a vaccination against COVID-19 is not disqualifying under Iowa law.

Because the separation from employment was not disqualifying the other issues listed on the notice of hearing need not be addressed.

DECISION:

The decision dated March 10, 2022, (reference 01) that allowed unemployment insurance benefits based on a finding that claimant was discharged on February 13, 2022, for refusing a vaccine required by employer is AFFIRMED.



Andrew B. Duffelmeyer
Administrative Law Judge

May 17, 2022

Decision Dated and Mailed

abd/abd