

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMANTHA M CREAMER
Claimant

TRIPLE J RANCH INC
Employer

APPEAL 20A-UI-01864-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/26/20
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
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:

Employer filed an appeal from the February 18, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 17, 2020, at 2:00 p.m. Claimant participated. Employer participated through Dustin Jentz, Operating Partner. Claimant's Exhibit A was admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time shift supervisor from August 5, 2019 until her employment with Triple J Ranch, Inc. (d/b/a Pizza Ranch restaurant) ended on January 28, 2020. Claimant's direct supervisor was Dustin Jentz, Operating Partner.

Employer has a policy prohibiting harassment. The policy defines harassment as verbal conduct such as epithets, derogatory comments, slurs and unwanted sexual advances, invitations, comments or inquires and visual conduct such as derogatory posters, photographs, cartoons, drawings or gestures. The policy states that harassment is punishable by immediate discharge. Claimant did not receive a copy of the policy.

On January 18, 2020, claimant's coworker yelled at claimant, grabbed claimant by the arm and followed claimant when she walked away. Claimant reported the incident to employer on January 19, 2020. Employer met with claimant and the coworker on January 21, 2020. The meeting was not productive. No disciplinary action was taken with the coworker as a result of the January 18, 2020 incident.

On January 26, 2020, claimant left a note for Jentz outlining items that had not been completed or not completed satisfactorily by the closing staff the night before. At the end of the list, claimant noted "worst close I've seen." Claimant's coworker, who was involved in the incident on January 18, 2020, was the manager for the closing shift the night before. The note was put in an unmarked envelope and left in a spot in Jentz's office that claimant believed only Jentz used. Claimant's coworker opened the envelope, read the note and became upset. On January 28, 2020, employer discharged claimant for violation of employer's harassment policy for the note claimant left for Jentz on January 26, 2020. Claimant had no prior warnings for harassment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Iowa Code section 96.5(2)(a) provides:

An individual shall be *disqualified for benefits*:

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(1)(a) provides:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct*. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge cannot be based on such past act or acts. The termination of employment must be based on a current act.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up

to or including discharge for the incident under its policy. 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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Claimant's comment regarding the "worst close" on the note she left for Jentz, while unnecessary, was not an act of harassment towards her coworker in violation of employer's harassment policy. Claimant's conduct was not a deliberate violation or disregard of the standards of behavior employer had a right to expect of claimant. In contrast, claimant's coworker's actions on January 18, 2020 may have constituted criminal assault and did not result in employer discipline. Claimant was discharged for no disqualifying reason. Furthermore, to the extent that claimant was subject to disparate discipline, her conduct cannot support a disqualification from unemployment benefits. Benefits are allowed.

Because claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The February 18, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/scn