

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOHN R SPEER**  
Claimant

**MARSHALLTOWN NEWSPAPER INC**  
Employer

**APPEAL 20A-UI-11917-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/14/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

John Speer (claimant) appealed a representative's September 21, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Marshalltown Newspaper (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 20, 2020. The claimant was represented by Richard Vander Mey, Attorney at Law, and participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file. Administrative Law Judges Adkisson and Nelson observed the hearing.

**ISSUES:**

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, which party should be charged for those benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 20, 2001, as a full-time editor. He signed for receipt of the employer's handbook when he was hired. The employer did not issue him any warnings during his employment.

In December 2019, the claimant was working under time restraints to get a newspaper finished. Suddenly his ancient computer had issues. Without thinking, he swore at the computer. The claimant does not remember anyone being in the room. Perhaps a couple employees were in an adjacent room. Swearing at work was not common but it happened. No one had been fired for swearing.

In January 2020, the publisher talked to the claimant about the incident in December 2019. She said it somehow effected the sports editor, who usually sat in an area two rooms removed from

the claimant's space. The publisher told the claimant, "You don't want to be an angry old man". The claimant was astounded by the publisher's remark.

On June 16, 2020, the publisher told the claimant he was terminated because the sport's editor complained in December 2019.

The claimant filed for unemployment insurance benefits with an effective date of June 14, 2020. His weekly benefit amount was determined to be \$393.00. The claimant received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after June 14, 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

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(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.

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).

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 for misconduct cannot be

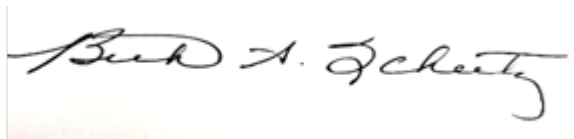
based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer told the claimant he was discharged for an incident that occurred in December 2019. The claimant was not discharged until June 17, 2020. The incident and the termination are too remote. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

**DECISION:**

The representative's September 21, 2020, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



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Beth A. Scheetz  
Administrative Law Judge

December 3, 2020  
Decision Dated and Mailed

bas/scn