

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LARRYCE M HARPER
Claimant

MID-STEP SERVICES INC
Employer

APPEAL 21A-UI-08383-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/24/21
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Larryce M. Harper, filed an appeal from the March 23, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 7, 2021. The claimant participated. Karlie Haugland testified. The employer, Mid-Step Services did not participate. Its registered witness was unavailable when called at the time of hearing.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Residential Living Assistance (“RLA”) beginning January 19, 2019 and was separated from employment on January 26, 2021, when she was discharged by her manager, Tom Hackett. According to claimant, he told her that she could not work with Ms. Hagland any longer.

Claimant was trained on employer rules and procedures. Claimant denied violating any rule or procedure. Claimant stated there was no rule prohibiting friendship between employees. Both claimant and Ms. Hagland were RLAs and neither in a leadership role. Claimant stated she and Ms. Hagland would take their breaks together outside and smoke, but that it did not violate any policy or procedure. Claimant stated she had smoked outside with her manager before on break as well, without any consequence. Claimant did not identify a final incident or issue. Claimant denied having any warnings. Claimant learned she had been discharged when her

name was crossed off the schedule. Other employees told her. She called her manager, who said it was a mistake. When claimant arrived to her next shift, she was fired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

As a preliminary matter, the administrative law judge finds that the Claimant did not quit. Claimant was discharged from employment.

Iowa Code § 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 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.

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(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate

the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute 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).

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.

In this case, the claimant credibly denied quitting and stated she was discharged after being told she could not be friend/work with Ms. Hagland. Employer furnished no evidence that claimant engaged in any conduct that violated a rule or expectation of employer. Neither claimant nor Ms. Hagland supervised the other. Claimant was permitted to smoke on her break and had previously taken smoke breaks with her own manager, without discipline. The employer did not participate and therefore did not refute the claimant's credible testimony. The employer has failed to meet its burden of proof in establishing a current act of disqualifying job-related misconduct. As such, benefits are allowed.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law.

DECISION:

The unemployment insurance decision dated March 23, 2021, (reference 01) is REVERSED. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. .



Jennifer L. Beckman
Administrative Law Judge
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June 21, 2021
Decision Dated and Mailed

jlb/scn