

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARA K HRDLICKA
Claimant

APPEAL 20A-UI-09506-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOPE HAVEN INC
Employer

**OC: 03/29/20
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 August 5, 2020, Hope Haven Inc. (employer/appellant) filed an appeal from the July 29, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on January 16, 2020 with no showing of willful or deliberate misconduct.

A telephone hearing was initially set for September 24, 2020. At that time, the administrative law judge determined the evidence presented may involve confidential information, disclosure of which is prohibited under Iowa law except in certain circumstances. The hearing was rescheduled so a letter could be sent from the undersigned to the parties, informing them of relevant laws they may wish to review that prohibit the disclosure of certain confidential information.

The hearing was rescheduled for October 8, 2020 at 3:30 p.m. A hearing was held at that time. The parties were properly notified of the hearing. Employer participated by Day Manager Erin Eggebeen. Sara Hrdlicka (claimant/respondent) participated personally.

Official notice was taken of the administrative record.

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?
- III. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was November 19, 2018. The last day claimant worked on the job was January 14, 2020. Claimant worked for employer as a full-time lead day program staff. Claimant's immediate supervisor was Eggebeen. Claimant separated from employment on January 16, 2020. Claimant was discharged by Eggebeen on that date.

Claimant was discharged because of the results of an internal investigation which found claimant failed to provide for the safety of an individual in her care. The incident leading to the discharge occurred on January 14, 2020. On that date, claimant and another staff member were taking individuals to an afternoon activity. While loading individuals into a vehicle to take them to the activity, one individual entered an unlocked vehicle in the parking lot without the knowledge of claimant or the other staff member. Claimant and the other staff member did not realize the individual had been left unattended until they were returning from the activity. The individual was left alone in the vehicle for approximately an hour. The individual was not capable of self-care.

Claimant and the other staff member located the individual upon returning and immediately reported it to employer. There was no formal procedure in place at the time for counting individuals before, during, or after an activity. Claimant was filling in for a staff member at the location where the incident occurred, so she was less familiar with the location and the individuals she was serving. Nothing of a similar nature involving claimant had previously occurred.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the July 29, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on January 16, 2020 with no showing of willful or deliberate misconduct is AFFIRMED.

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). While claimant's failure to properly supervise the individual involved is troubling and could have resulted in harm to the individual, it was inadvertent and an isolated instance of negligence. Such conduct does not rise to the level of substantial job-related misconduct under Iowa law such that she is disqualified from benefits.

DECISION:

The July 29, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on January 16, 2020 with no showing of willful or deliberate misconduct is AFFIRMED. Claimant's separation from employment was not disqualifying. Benefits are allowed, provided she is otherwise eligible.



Andrew B. Duffelmeyer
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October 14, 2020
Decision Dated and Mailed

abd/scn