

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MAKENZI ZIMMERMAN
Claimant

APPEAL 22A-UI-04101-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 01/09/22
Claimant: Respondent (2)**

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 February 7, 2022, Casey's Marketing Company (employer/appellant) filed an appeal from the Iowa Workforce Development decision dated January 28, 2022 (reference 01) that allowed unemployment insurance benefits based on a finding claimant's January 13, 2022 discharge from employment was not due to willful or deliberate misconduct.

A telephone hearing was held on March 16, 2022. The parties were properly notified of the hearing. Employer participated by Store Manager Reese Millsap. Makenzi Zimmerman (claimant/respondent) did not appear or participate. 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?

FINDINGS OF FACT:

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

Claimant's first day of employment was October 29, 2019. Claimant worked for employer as a full-time store manager. Claimant's immediate supervisor was Eric Hardesty. Claimant separated from employment on January 13, 2022. Claimant was discharged on that date.

Claimant was discharged due to timecard falsification. Mr. Millsap had been monitoring claimant's attendance at work for a couple weeks prior to the discharge. On January 12, 2022 he called the store and went to the store to try to reach claimant and was told by employees they had not seen

her that day. He reviewed video for that day and several prior days when claimant was scheduled to work and clocked in for work and determined she was not present at the store during those times. He came back to the store at 4 p.m. on January 12, 2022 and claimant was still not present.

Mr. Millsap and former manager Eric Hardesty confronted claimant with these findings on January 13, 2022. She was largely unable to explain why she would be scheduled for work, clocked in for work, but not present at the store performing work on January 12, 2022 and on prior occasions.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$541.00 for a total of six weeks, from the benefit week ending January 29, 2022 and continuing through the benefit week ending March 5, 2022. The total amount of benefits paid to date is \$3,246.00.

The administrative record shows a notice was mailed January 21, 2022 for a fact-finding interview set for January 27, 2022 at 11:15 a.m. Mr. Millsap is unsure whether employer participated in the fact-finding interview. The administrative record is devoid of information regarding whether employer participated in it.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated January 28, 2022 (reference 01) that allowed unemployment insurance benefits based on a finding claimant's January 13, 2022 discharge from employment was not due to willful or deliberate misconduct is REVERSED.

- 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).

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).

The administrative law judge finds employer has 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). Claimant was scheduled for work, clocked in for work, but not working on several days immediately prior to discharge. This is a material breach of the duties and obligations arising out of her contract of employment.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$541.00 for a total of six weeks, from the benefit week ending January 29, 2022 and continuing through the benefit week ending March 5, 2022. The total amount of benefits paid to date is \$3,246.00. Because the administrative law judge now finds claimant disqualified from benefits during that period, she has been overpaid in that amount.

Applicable law requires that overpayments caused by a reversal on appeal of a separation determination shall be recovered unless it is shown that employer failed to participate in the fact-finding interview. The administrative law judge cannot conclude based on the evidence presented that employer failed to participate in the fact-finding interview. As such, the overpayment shall be recovered, the charge for the overpayment against the employer's account shall be removed, and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

DECISION:

The decision dated January 28, 2022 (reference 01) that allowed unemployment insurance benefits based on a finding claimant's January 13, 2022 discharge from employment was not due to willful or deliberate misconduct is REVERSED. The separation from employment was disqualifying. The disqualification shall continue until claimant earns wages for insured work equal to ten times her weekly benefit amount.

Claimant was overpaid benefits in the amount of \$3,246.00. The overpayment shall be recovered. The charge for the overpayment against the employer's account shall be removed, and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.



Andrew B. Duffelmeyer
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March 23, 2022
Decision Dated and Mailed

abd/abd