

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SANDRA C STANLEY

Claimant

FISHER CONTROLS INTERNATIONAL LLC

Employer

APPEAL 21A-UI-07285-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/03/21

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r.871-24.32(8) - Current Act

STATEMENT OF THE CASE:

The claimant/appellant, Sandra C. Stanley, filed an appeal from the March 2, 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 May 20, 2021. The claimant participated personally and was represented by Raymond J. Starks, attorney at law. The employer, Fisher Controls International LLC., participated through Stacey Duden, Labor Relations. Michelle Burgess, HR director, attended as an observer.

Employer Exhibits 1-4 were admitted. 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.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

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 shipper/receiver and was separated from employment on December 21, 2020, when she was discharged for falsification of company documents.

Claimant was a long-term employee. She had worked for the employer since 2000. Claimant was eligible for employer benefits, which included health insurance, dental insurance, and life insurance for her and her spouse. Claimant each year would be made aware of “open enrollment” and in some years, she was required to confirm h

Claimant had been married to Raymond Stanley from 1979 until August 2016. During their marriage, claimant had elected for Mr. Stanley to be included in her benefits. In 2016, they divorced (See Employer Exhibit 1). Claimant did not notify the employer that Mr. Stanley should be removed from her benefits.

Mr. Stanley remained on claimant's health insurance and benefits. On November 15, 2017, claimant completed open enrollment and listed Mr. Stanley as her spouse, and elected for him to be covered for vision insurance (Employer Exhibit 2). Before signing the open enrollment form, claimant had to sign and date the document (Employer Exhibit 2). The document alerted claimant that she had 30 days to notify the employer of a "change in family status" and that falsification of the document would be grounds for termination (Employer Exhibit 2). On November 15, 2017, Mr. Stanley was not claimant's spouse.

Mr. Stanley remained on claimant's benefits elections. In 2020, claimant again had to complete open enrollment documentation. On October 9, 2020, claimant listed Mr. Stanley to be covered, including an additional life insurance policy for him (Employer Exhibit 2). Claimant listed Mr. Stanley in the section of "spouse/partner." Claimant stated at the time she and Mr. Stanley lived apart, were not "back together", or dating, but that he was her "partner" inasmuch as she would visit his house, hang out and engage in sexual relations.

On October 14, 2020, the employer received a phone call from Mr. Stanley's social worker (Employer Exhibit 4) about the claimant's listing him on her insurance/benefits impacting his ability to receive other care. Employer did not contact claimant for an explanation or notify her that she was under investigation. Claimant continued to work for over two months, unaware employer was investigating whether she had falsified her open enrollment documents. Employer stated its investigation consisted of asking the social worker for a copy of the divorce decree.

December 21, 2020: Claimant was confronted by the employer and discharged for falsifying her open enrollment documents by listing Mr. Stanley as a spouse and partner after their 2016 divorce. At the time, claimant stated she believed he was supposed to remain on her insurance after the divorce but had not read the divorce decree.

Claimant stated she did not read the divorce decree, the open enrollment documents or company procedures/policies during her twenty years of employment because "it was a lot of paperwork." She was subsequently discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged disqualifying, job-related misconduct. However, the final act for which she was discharged was not a **current act** of misconduct according to Iowa law. Therefore, benefits are allowed, provided she is otherwise eligible.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Honesty is a reasonable, commonly accepted duty owed to the employer. The claimant in this case repeatedly represented that Mr. Stanley was her spouse for purposes of obtaining health or life insurance benefits with the employer. Claimant knew she and Mr. Stanley were divorced effective August 2016 but continued to list him as a spouse. This was not accurate or truthful. The administrative law judge did not find claimant's denial of knowing employer policies, open enrollment information or that her divorce may impact benefit eligibility to be credible. Further, claimant was warned at least twice post-divorce when she signed open enrollment forms that falsifying documents could lead to discipline (See Employer Exhibit 2).

Claimant had a reasonable obligation to update her employer about her divorce (inasmuch as she represented they were still spouses or "partners" on company forms), and read her divorce decree. She could have or should have contacted the employer if she had any questions about whether the divorce would impact his eligibility for benefits. Claimant did not. The administrative law judge is persuaded the claimant knew or should have known her conduct was contrary to the best interests of the employer. Claimant's conduct constitutes misconduct.

However, for purposes of determining claimant's eligibility, the issue at hand is not whether claimant did in fact misrepresent or provide false information on her open enrollment documents, but whether she was discharged for a "final or current act of misconduct" according to Iowa law.

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.

Employee misconduct must be a current act in order to deny unemployment benefits. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). This incident must occur within a reasonable period from the discharge date. The issue is when the employer learned of the current act and did it act to terminate the individual within a reasonable period of time. An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011).

Although the claimant did engage in a final act of misconduct by falsifying open enrollment documents, inasmuch as the employer knew of the incident the October 14, 2020, did not advise the claimant it was an issue that would be investigated and then fired her two months later, the act for which the claimant was discharged was no longer current.

In this case, employer's "investigation" consisted of obtaining a copy of the divorce decree from the social worker assigned to claimant's ex-husband. This does not warrant a two month delay in discipline or notifying claimant of pending discipline. The employer cannot on one hand argue that the conduct was so egregious that it warranted discharge instead of a lesser penalty, but then allow the claimant to continue working for two months before determining she should be discharged. Because the act for which the claimant was discharged was not current and the claimant may not be disqualified for past acts of misconduct, 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.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The unemployment insurance decision dated March 2, 2021, (reference 01) is REVERSED. The claimant was discharged disqualifying, job-related misconduct. However, the final act for which she was discharged was not a **current act** of misconduct according to Iowa law. Therefore, benefits are allowed, provided she is otherwise eligible.

Jennifer L. Beckman

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May 27, 2021

Decision Dated and Mailed

jlb/kmj