

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CLARE M DIETER
Claimant

RIVERVIEW CENTER INC
Employer

APPEAL 20A-UI-06458-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/29/20
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Clare Dieter (claimant) appealed a representative's June 9, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Riverview Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 23, 2020. The claimant participated personally. The employer participated by Dana Fessler, Human Resources, and Joey Taylor, Executive Director. The employer offered and Exhibits One and Two were received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 October 1, 2018, as a full-time sexual assault advocate preventionist. She signed for receipt of the employer's handbook. The supervisor talked to her about lying down at work. The claimant explained to the supervisor that she had a degenerative back disease. The chairs at work bothered the claimant. The employer had discussions with the claimant about performance concerns but did not issue her any warnings.

On May 7, 2020, there was a Zoom meeting regarding a whistleblower complaint. The claimant was not a part of that meeting. On May 12, 2020, the claimant took part in a Zoom meeting and she was reclining. The human resources director (HRD) had a meeting with the claimant after the meeting. She showed the claimant pictures of the claimant at the meeting with her child. The claimant's child came into the room for a moment to ask about a meal.

During her lunch break, the claimant and other employees shared a group text. The claimant told the others about the disciplinary meeting and the questions that were asked by the HRD. The claimant talked about how a picture of her child was taken and shared with her during a disciplinary meeting. She related that the HRD asked for names of workers who had other

people in videos. The claimant said, "I didn't say anything. Because Prison Mike told me snitches get stitches". The claimant was referring to a television character from "The Office".

On May 14, 2020, the HRD met with the claimant after seeing the texts. She told the claimant she was terminated because "her values did not align with the agency". The HRD terminated the claimant for non-specific unprofessional conduct on May 12 and 13, 2020. Ten minutes before the claimant was terminated, the HRD terminated the claimant's co-worker. The claimant's supervisor was terminated on or about May 14, 2020, for asking the employer about whistle blowing issues. Another co-worker was terminated in June 2020.

The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. She filed an additional claim on May 17, 2020. Her weekly benefit amount was determined to be \$418.00. The claimant received benefits of \$418.00 per week for the week ending April 18, 2020. She also received \$600.00 in Federal Pandemic Unemployment Compensation for the one-week period ending April 18, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

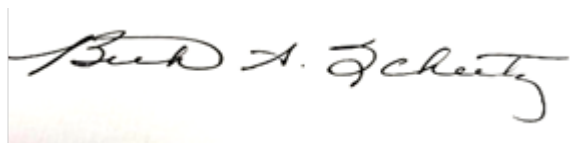
Iowa Admin. Code r.871-24.32(8) provides:

(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). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to show any evidence of a final incident of misconduct. It terminated the claimant for values that did not align with the agency. It did not provide specific behavior that violated the employer's policies. The employer has failed to offer any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's June 9, 2020, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

July 30, 2020
Decision Dated and Mailed

bas/scn