

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINE M KNAPP
Claimant

APPEAL 22A-UI-04216-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACOSTA EMPLOYEE HOLDCO L
Employer

**OC: 02/07/21
Claimant: Appellant (02)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 31, 2022, (reference 06) unemployment insurance decision that denied benefits based upon her separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on March 18, 2022. The claimant, Christine Knapp, participated personally. The employer, Acosta Employee Holdco, participated through Sabrina Swinford. No exhibits were offered or admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Did the claimant voluntarily quit by not reporting for an additional work assignment within three business days of the end of the last assignment?
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 a temporary employee of a temporary employment firm. Claimant began her employment November 6, 2018 as a part time seasonal retail merchandiser. Claimant's immediate supervisor was Richard Pilla and then Sabrina Swinford. The claimant last worked for the employer the second week of June 2021. Claimant was unable to log into her online portal. She contacted the IT department which informed her they did not have any information for her to help her get logged back in. Claimant sent an email to Sabrina Swinford the third or fourth week of June inquiring why she couldn't log in to her portal. Claimant did not receive a response to her email. Claimant did not contact anyone else as the remainder of her contact information for the company was inside her portal. Claimant never had any further communication with anyone from the company. Claimant never received any termination papers or any information saying that she voluntarily quit.

Sabrina Swinford was the area manager and direct supervisor to the claimant effective March 2021. Claimant last worked May 2021. Claimant was terminated from employment. Claimant

was terminated because she had an overdue account. As a part of employment, the employee was required to keep up with account. Claimant was written up for overdue calls and for not contacting her supervisor prior to missing scheduled work. The claimant did not contact the employer after receiving the write up. When her overdue account was not handled, she was terminated from employment. In July 2021, the claimant notified the employer that she could not handle any additional work due to a conflict with another employer.

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).

In this case, the claimant did not handle her overdue accounts per her employer's instructions. The claimant also failed to communicate with the employer regarding her overdue accounts according to the employer's instructions. There is no evidence of deliberate disregard of the employer's interests.

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

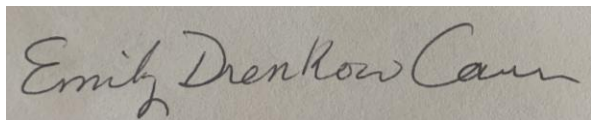
(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The purpose of this rule is to assure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises. For example, an employer may not convert a lay off into a termination for misconduct by relying on past acts. *Milligan v. EAB*, 802 N.W.2d 238 (Table)(Iowa App. June 15, 2011).

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. Because benefits are allowed, the issues of overpayment and chargeability are moot.

DECISION:

The January 31, 2022, (reference 06) unemployment insurance decision is reversed. The claimant was discharged without disqualifying misconduct. Unemployment insurance benefits are allowed.

A rectangular box containing a handwritten signature in black ink. The signature reads "Emily Drenkow Carr" in a cursive script.

Emily Drenkow Carr
Administrative Law Judge

March 30, 2022
Decision Dated and Mailed

ed/jh