

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SANDRA PURVIS
Claimant

T & L FOODS OF NEWTON INC
Employer

APPEAL 22A-UI-04431-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/16/22
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On February 2, 2022, the employer filed an appeal from the February 1, 2022, (reference 01) unemployment insurance decision that allowed benefits based on a determination that the claimant was discharged for no current act of disqualifying misconduct.. The parties were properly notified about the hearing. A telephone hearing was held on March 22, 2022. Claimant, Sandra Purvis, participated and testified. Employer participated through General Manager Autumn Hutchinson. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant discharged from employment for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 3, 2020. Claimant last worked as a full-time server. Claimant was separated from employment on January 10, 2022, when she was discharged for not getting along with another employee. The employer was somewhat vague about specific issues that they had with the claimant but it was mostly due to her interaction with another staff person who continues to work for the employer. The employer gave the claimant a two-week notice of discharge which allowed the claimant to work for two additional weeks with the knowledge that she would no longer have a job after January 23, 2022. The claimant was warned that she could be asked not to come back at any point during these two weeks if she created any further issues. The claimant refused to work a shift with a co-worker on January 13, 2022, because the co-worker had recently tested positive for Covid-19 but was allowed to work with a mask. The employer informed the claimant that she did not need to come in for the remainder of her shifts.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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.

871 IAC 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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The employer cannot discharge an employee for misconduct and then allow them to work an additional two weeks' notice of discharge period and then expect to prevail on the issue of job-disqualifying misconduct that denies unemployment benefits.

Allowing a claimant to continue to work for two weeks following a determination that the claimant engaged in misconduct completely erases the current act requirement in a misconduct case. Additionally, in this case, the employer's stated reasons for discharge were vague and did not outline any specific behaviors that equate to disqualifying misconduct.

The employer failed to meet its burden in proving job disqualifying misconduct and benefits are allowed.

DECISION:

The February 1, 2022, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



Jason Dunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

March 31, 2022
Decision Dated and Mailed

jd/kmj