

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIELLE G STEVEN
Claimant

**VERMEER MANUFACTURING COMPANY
INC**
Employer

APPEAL 21A-UI-10726-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Respondent (1)

Iowa Admin. Code r. 871-24.32(1)A – Misconduct

STATEMENT OF THE CASE:

On April 19, 2021, Vermeer Manufacturing Company Inc (employer/appellant) filed an appeal from the April 7, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on March 8, 2021 without a showing of misconduct.

A telephone hearing was held on July 1, 2021. The parties were properly notified of the hearing. Employer participated by HR Business Partner Nick Rohner. Danielle Steven (claimant/respondent) participated personally.

Employer's Exhibits 1-4 were admitted. 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?

FINDINGS OF FACT:

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

Claimant's first day of employment was November 19, 2018. She was initially employed as a material handler. She moved to a full-time machining specialist position in September 2019. Her most recent immediate supervisor in that position was Fred Willett. She remained in that position until she was discharged on March 18, 2021.

The most recent incident leading to discharge occurred on that date. On that date, claimant's machine "crashed," meaning it was run without first being properly calibrated to perform the task it was meant to do. It was determined the cause of the crash was the operator failing to follow the set-up instructions. Claimant believed she followed the set up process properly but later determined she had not double-checked to ensure the machine was properly calibrated. The machine claimant used had a "glitch" where it would indicate it was properly set up but when figures were double checked it was not. Claimant had caught such glitches many times in the past but failed to do so here. Claimant realized there was a problem almost immediately as she

began operating the machine and so safely shut it down and contacted maintenance. There was no major damage to the machine caused by the incident.

Similar incidents occurred on January 28, 2021; July 31, 2020; July 29, 2020; and October 21, 2019. Claimant was counseled after each such incident but did not believe those incidents placed her job in jeopardy. Employer expects crashes to occur from time to time, in part because the area where claimant worked made a greater variety of products which meant more opportunities for errors in set up. Claimant been told by machinists who had been there for many years that crashes happened and others crashed as much or more than her without being discharged.

Claimant was placed on a disciplinary action plan on December 16, 2020, for unrelated reasons. While employer considered this incident to still be "active," as it had occurred within the prior six months, it was not the reason for her discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the April 7, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on March 8, 2021 without a showing of misconduct is AFFIRMED.

- 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).

Employer has not 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). The administrative law judge finds the incidents leading to discharge were inadvertencies or ordinary negligence in isolated instances, which are not misconduct within the meaning of the statute. Benefits are therefore allowed, provided claimant is not otherwise disqualified or ineligible.

Because benefits are allowed, the other issues noticed need not be addressed.

DECISION:

The April 7, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on March 8, 2021 without a showing of misconduct is AFFIRMED.



Andrew B. Duffelmeyer
Administrative Law Judge
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July 15, 2021
Decision Dated and Mailed

abd/lj