

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JESSICA A CLARK**  
Claimant

**KEOKUK AREA HOSPITAL**  
Employer

**APPEAL 20A-UI-12317-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/20  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On October 1, 2020, Jessica Clark (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated September 21, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on July 2, 2020 for personal reasons.

A telephone hearing was held on December 4, 2020. The parties were properly notified of the hearing. The claimant participated personally. Keokuk Area Hospital (employer/respondent) participated by Employment Manager Louise Skow.

Employer's exhibits 1 and 2 were admitted. Claimant's exhibit A was admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation from employment 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 began working for employer on June 6, 2005. Claimant worked for employer full-time as a central supply distribution tech. Claimant's immediate supervisor was Betsy Newbill. The last day claimant worked on the job was June 27, 2020. Claimant separated from employment on July 2, 2020.

Claimant contacted Skow in late-June 2020 to notify her that she had recently been charged with possession of marijuana. Claimant met with Skow on July 2, 2020 to discuss this issue. At that time, claimant indicated she would test positive if she were to take a drug test. Skow told claimant that she could either resign or she would be discharged. Skow did not notify claimant that she could be referred to an assistance program if she agreed to take the drug test, as is set forth in employer's substance abuse policy. Skow instead indicated that employer had a no-tolerance substance abuse policy. Claimant was informed that if she resigned she would be eligible for re-hire in the future and that it would look better than a discharge if employer was called for a job

reference in the future. Claimant would have chosen to take a drug test and be referred to an assistance program rather than resigning in lieu of discharge, if that option had been offered to her. Employer would not have discharged claimant if she had taken the test and accepted a referral to an assistance program.

Claimant had not recently been disciplined. There was no indication that she performed work while under the influence of marijuana or that her work had otherwise been impacted by any alleged marijuana use.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the decision dated September 21, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on July 2, 2020 for personal reasons is REVERSED. Claimant did not resign but was discharged. Employer has not carried its burden of proving claimant's discharge was for a substantial act of job-related misconduct. As such, the separation was not disqualifying and claimant is eligible for benefits, provided she meets all other eligibility requirements.

As an initial matter, the administrative law judge finds claimant was compelled to resign when given the choice of resigning or being discharged. Claimant would not have resigned if she had been aware of and offered the other options available to her. She resigned only because she was told she would be discharged if she did not, and a discharge would adversely affect future employment prospects with this and other employers. Such a separation is not considered a voluntary quit. See Iowa Admin. Code r. 871-24.26(21). As such, the separation must be analyzed as a discharge.

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).

Events that occur outside of work seldom constitute job-related misconduct. There was no indication that claimant performed work while under the influence of marijuana or that her work had otherwise been impacted by any alleged marijuana use. There was also no indication that the charge would have legally prevented her from continuing in the position.

While employer characterized its policy as a zero-tolerance policy, the policy in fact allowed for claimant to continue her employment and be referred to an assistance program. The employer does not necessarily have to follow that policy if it does not wish to. However, its existence along

with employer's testimony that it would not have discharged claimant if she had taken the test and accepted a referral to an assistance program strongly undercuts the notion that immediate discharge was warranted. It is puzzling why employer did not notify claimant of this option, which it seems would have preserved the long-standing employment relationship.

The administrative law judge finds claimant's marijuana charge does not constitute a current act of substantial job-related conduct such that she is disqualified from benefits. She is therefore eligible for benefits, provided all other eligibility requirements are met.

**DECISION:**

The decision dated September 21, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on July 2, 2020 for personal reasons is REVERSED. Claimant did not resign but was discharged. Employer has not carried its burden of proving claimant's discharge was for a substantial act of job-related misconduct. As such, the separation was not disqualifying and claimant is eligible for benefits, provided she meets all other eligibility requirements.



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December 11, 2020  
Decision Dated and Mailed

abd/mh