

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JEFFREY F FOURNIER**  
Claimant

**SLB OF IOWA LC**  
Employer

**APPEAL NO. 21A-UI-06134-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/15/20**  
**Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 10, 2021, reference 01, decision that allowed benefits to the claimant provided the claimant met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on November 20, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on May 11, 2021. Claimant, Jeffrey Fournier, participated. Karen Beard represented the employer and presented additional testimony through Cynthia Kapela. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 7 into evidence. The administrative law judge took official notice of the Fair Labor Standards Act (FLSA) regarding child labor laws applicable to youths 14 and 15 years old. The fact-finding materials were not available for the hearing.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by SLB of Iowa, L.C. as a full-time General Manager until November 20, 2020, when the employer discharged the claimant for violating child labor laws, for falsifying employee time reports, and for violating the employer prohibition against modifying employee timecard entries. The claimant began his employment in December 2018 as a full-time assistant manager. The claimant trained at the Fleur Drive store and at the North Ankeny store before being promoted to General Manager of the North Ankeny store in March 2019. The training the employer provided included training regarding federal child labor laws. Those federal laws, as they applied to 14 to 15-year-olds, limited such employees to working not more than three hours per school day, 18 hours per school week, eight hours per non-school day, and 40 hours in a non-school week. In addition, those laws limited such employees to working between the hours of 7:00 a.m. and 7:00 p.m., except from June 1 through Labor Day, during which the nighttime hours were extended to 9:00 p.m. As General Manager at the North

Ankeny store, the claimant supervised about 25 employees, including five to six employees under 16 years old.

In September 2020, a different Panera store was cited for violating child labor laws. On September 26, 2020, the employer sent an email message to managers, including the claimant, in which the employer set forth additional guidelines to ensure compliance with child labor laws pertaining to employees under 16 years old. The employer thereafter identified 16 violations at the claimant's store for the week that ended October 27, 2020. The employer spoke with the claimant at that time and reinforced the compliance expectation and requirements.

The employer discharged the claimant after the employer learned that the claimant knowingly and intentionally violated child labor and other labor laws by illegally subtracting time from a 15-year-old employee's time report to make it look like the store was in compliance, when the store was not in compliance. The conduct came to the employer's attention on November 15, 2020, when the 15-year old employee spoke to another manager about the claimant telling the employee she had forced the claimant to do something illegal, about the claimant stating he needed to deduct time from the employee's time report for the previous week, and about the claimant stating he would try to add the time back in at some point. The district manager interviewed the 15-year-old employee and then interviewed the claimant. The claimant was initially dishonest and asserted that the altered time report was correct. Upon further questioning, the claimant confirmed the 15-year-old's statement as accurate.

The claimant established a claim for benefits that was effective November 15, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$531.00. The claimant received \$3,887.00 in benefits for the eight weeks between November 15, 2020 and January 9, 2021. This employer is the sole base period employer. The claimant also received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for the two-week period of December 27, 2020 through January 9, 2021.

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

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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 -24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4).

The evidence in the record establishes a discharge for misconduct in connection with the employment. The claimant knowingly and intentionally violated child labor and other labor laws, knowingly and intentionally violated the employer's protocol concerning child labor, knowingly and intentionally falsified employee time reports, attempted to enlist a minor subordinate as a conspirator, and was intentionally dishonest with the employer when questioned about the matter. The claimant's conduct demonstrated a willful and wanton disregard of the employer's interests. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for future benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits, even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base employer failed to

participate in the initial proceeding, the employer will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The matter of deciding whether the \$3,887.00 regular benefits should be recovered from the claimant or charged to the employer under Iowa Code § 96.3(7)(b) is remanded to the Benefits Bureau.

This matter is also remanded to the Benefits Bureau for entry of an overpayment decision concerning the \$600.00 in FPUC benefits paid to the claimant for the period of December 27, 2020.

**DECISION:**

The February 10, 2021, reference 01, decision is reversed. The claimant was discharged on November 20, 2020 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for future benefits.

This matter is **remanded** to the Benefits Bureau for entry of an overpayment decision regarding the \$3,887.00 in benefits the claimant received for eight weeks between November 15, 2020 and January 9, 2021 and for determination of whether the regular benefits should be recovered from the claimant or charged to the employer's account.

This matter is also **remanded** to the Benefits Bureau for entry of an overpayment decision concerning the \$600.00 in FPUC benefits paid to the claimant for the period of December 27, 2020.



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James E. Timberland  
Administrative Law Judge

September 15, 2021  
Decision Dated and Mailed

jet/scn