

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BARRY C REYNOLDS**  
Claimant

**AMAZON.COM SERVICES, INC.**  
Employer

**APPEAL 22A-UI-02337-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/28/21  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

On January 6, 2022, Amazon.com Services, Inc. (employer/appellant) filed an appeal from the decision dated December 28, 2021 (reference 02) that allowed unemployment insurance benefits based on a finding claimant was discharged on November 28, 2021 without a showing of misconduct.

A telephone hearing was held on February 17, 2022. The parties were properly notified of the hearing. Employer participated by Senior HR Business Partner Emily Ferren and was represented by Hearing Rep. Jennifer Rice. Barry Reynolds (claimant/respondent) participated personally.

Employer's Exhibits 1 and 2 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 worked for employer as a full-time process assistant. Claimant's first day of employment was in December 2020. The last day claimant worked on the job was November 27, 2021. Claimant's immediate supervisor was Wesley Kotz, although claimant typically took direction from whomever was the area manager on duty while he was working. Claimant was discharged on November 28, 2021.

The incident leading to discharge occurred on November 25, 2021. One of claimant's job duties was to ensure a package conveyor belt was moving properly. On that date an item became stuck in the conveyor belt. Claimant attempted to use the "jam pole" to remove the jam but was unsuccessful in doing so. He was directed over the radio to remove the jam any way he could. Claimant therefore used the emergency stop function on the conveyor belt and then reached over

a guardrail to remove the jam. Claimant had witnessed other employees do this same thing and so did not believe it was prohibited. The area manager working on that date, Nick O'Dwyer, observed claimant doing this and did not direct him not to do so or otherwise counsel him that doing so was prohibited. Claimant had not been previously counseled or disciplined for safety-related issues.

Employer's policies consider bypassing a safety device to be a Category 1 violation of its safety standards, and its policies note that such a violation will likely result in termination after just one offense. It gives as examples "tampering with an equipment's safety mechanism such as a conveyor e-stop, or removing safety guards."

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

For the reasons set forth below, the decision dated December 28, 2021 (reference 02) that allowed unemployment insurance benefits based on a finding claimant was discharged on November 28, 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). While claimant's conduct arguably violated employer's safety standards, claimant credibly testified that others had done the same thing without consequence and that his supervisor on the date in question did not stop or counsel him. Claimant therefore reasonably believed that the conduct was not prohibited and was in fact part of his job duties in keeping the conveyor belt moving. Furthermore, claimant had never been counseled or disciplined for similar safety-related issues in the past. The administrative law judge cannot find claimant's actions were knowing, intentional, or negligent to such a degree of recurrence as to constitute disqualifying job-related misconduct in these circumstances.

Because the administrative law judge finds the separation from employment was not disqualifying, the other issues noticed need not be addressed.

**DECISION:**

The decision dated December 28, 2021 (reference 02) that allowed unemployment insurance benefits based on a finding claimant was discharged on November 28, 2021 without a showing of misconduct is **AFFIRMED**. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account is subject to charge.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
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March 3, 2022  
Decision Dated and Mailed

abd/abd