

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA A MCCOY
Claimant

CRESCENT ELECTRIC SUPPLY COMPANY
Employer

APPEAL 20A-UI-07199-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/24/20
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview
PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the June 19, 2020 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon her discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on August 5, 2020. The claimant, Melissa A. McCoy, participated personally. Attorney Dylan Thomas represented the claimant. The employer, Crescent Electric Supply Company, participated through witness Teresa Biroshik. Claimant's Exhibits A, B, and C were admitted. Employer's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?
Has the claimant been overpaid Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time beginning June 21, 2018. She worked as a truck driver. Her job duties included picking and packing customer orders; loading and unloading orders into and out of the truck; and delivering electrical parts to customers.

On January 14, 2019, claimant suffered from an injury at work. A worker's compensation claim was filed and she was treated for her injuries. Claimant suffered a fracture to her L1. On April 11, 2019, after performing an MRI, it was determined that the claimant also suffered from a herniated disc at her L5-S1. See Exhibit A. Work restrictions including no lifting more than ten pounds and no twisting and bending were put in place from the date of her injury through May 13, 2020. On May 13, 2020, claimant's employer presented her with documentation from

Dr. Nelson, who had indicated that she had reached medical maximum improvement as of January 7, 2020. See Exhibit 1. Dr. Nelson opined that the claimant was released from her work restrictions as of January 7, 2020. See Exhibit 1.

Claimant agreed to go back to work without restrictions and she did so. She worked on May 14, 2020 without restrictions and performed her normal job duties. On that same day she emailed her supervisor stating that riding in the company truck caused her pain in her back and requested that she be able to see a doctor. See Exhibit B. Claimant made a doctor's appointment with Dr. Lyons on May 26, 2020. Claimant performed her normal job duties on May 18, 2020. Claimant called off work on May 19, 2020 due to pain she was having in her back. On May 21, 2020 the claimant was off of work and she emailed the employer stating that she felt she could not do some of her essential job duties because of her back injury and pain. Claimant was called into a meeting on May 22, 2020 with Ms. Biroshchik, Mr. Madison, Mr. Uetz, and Ms. Frazier. During this meeting the claimant discussed the pain she was having with her back while riding in the company truck. The claimant was asked if she was going to perform the essential job duties of her job and if not, if she was resigning. The claimant gave a written statement that she was not resigning and was not able to do her job duties. See Exhibit 1. The employer then made the decision to terminate the claimant from employment. See Exhibit 1.

Claimant has received \$2,934.00 in unemployment insurance benefits since filing her original claim for benefits effective May 24, 2020 through August 1, 2020. Claimant has also received \$4,800.00 in Federal Pandemic Unemployment Compensation benefits from May 24, 2020 through July 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Iowa Code § 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.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

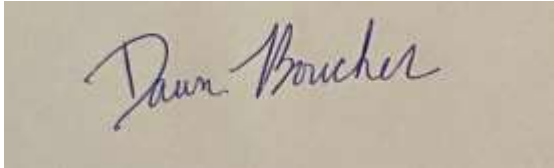
(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job-related 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). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

In this case, the claimant was having pain from an injury to her back. She reported this pain to her employer and requested to see a doctor. She told the employer that she did not believe that she could perform her job duties due to this pain. The employer terminated her employment at that time. Claimant's reporting of pain in her back, requesting to see a doctor, and telling the employer she was unable to complete her job duties due to pain in her back was not an incident of insubordination or any other type of substantial job-related misconduct. The employer has failed to establish any incident of disqualifying job-related misconduct that would disqualify the claimant from receipt of unemployment insurance benefits. As such, benefits are allowed, provided the claimant is otherwise eligible. Because benefits are allowed, the issues of overpayment of benefits and overpayment of Federal Pandemic Unemployment Compensation benefits are moot.

DECISION:

The June 19, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

A rectangular area containing a handwritten signature in dark ink on a light-colored background. The signature reads "Dawn Boucher" in a cursive script.

Dawn Boucher
Administrative Law Judge

August 13, 2020
Decision Dated and Mailed

db/sam