

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REBECCA M SALADO

Claimant

APPEAL 21A-UI-07680-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMES RACQUET AND FITNESS

Employer

OC: 03/15/20

Claimant: Respondent (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Ames Racquet and Fitness (employer) appealed a representative's March 9, 2021, decision (reference 01) that concluded Rebecca Salado (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2021. The claimant participated personally. The employer participated by Tom Durkin. The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, and which party should be charged for those benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 23, 2017, as a front desk employee and then was transitioned to the events coordinator.

In March 2020, Governor Reynolds closed fitness facilities due to the Covid-19 pandemic. The employer experienced a decrease in clientele and revenue. Claimant's position was eliminated on October 15, 2020. The employer alleged no misconduct and re-iterated that the elimination of the claimant's position was a financial decision.

The claimant filed for unemployment insurance benefits with an effective date of March 15, 2020. The claimant received a total of \$1,420.00 in state unemployment insurance and after October 31, 2020. The employer participated personally at the fact finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

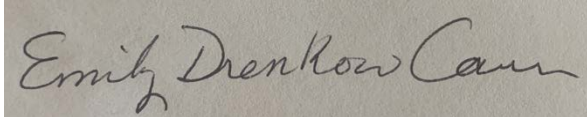
The employer has the burden of proof in establishing disqualifying job misconduct. In this case, the employer makes no allegation of misconduct.

The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct. Benefits are allowed.

The employer participated in the fact-finding interview and the discharge was Covid-19 related. The employer's account shall not be charged.

DECISION:

The representative's March 9, 2021, decision (reference 01) is affirmed in part and reversed in part. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible. The employer participated in the fact finding interview and its account shall not be charged.

A handwritten signature in cursive script, reading "Emily Drenkow Carr", written in dark ink on a light-colored, textured background.

Emily Drenkow Carr
Administrative Law Judge

June 4, 2021
Decision Dated and Mailed

ed/scn