

**IOWA DEPARTMENT OF INSPECTION AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

KARRIANN REISING
Claimant

APPEAL 22A-UI-11161-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/27/22
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

STATEMENT OF THE CASE:

Hy-Vee Inc, the employer/appellant, filed an appeal from the Iowa Workforce Development's (IWD) April 21, 2022, (reference 01) unemployment insurance (UI) decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 25, 2022. The employer participated through Joann Peterson, human resources manager, Amanda Vincent, pharmacy manager, and Tim Cernin, district store manager. Ms. Reising participated personally. M. Leanne Tyler, attorney, represented Ms. Reising. The administrative law judge took official notice of the administrative record. Employer's Exhibit 1 and Claimant's Exhibits 1-9 were admitted as evidence.

ISSUES:

Did the employer discharge Ms. Reising from employment for disqualifying job-related misconduct?

Was Ms. Reising overpaid benefits?

If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Reising began working for the employer on March 19, 2001. She worked as a full-time pharmacist. Ms. Vincent was Ms. Reising's supervisor for about four years. Ms. Reising had trained Ms. Vincent when Ms. Vincent started as a pharmacist. Ms. Reising's employment ended on February 25, 2022.

Ms. Vincent and other employees noticed that Ms. Reising was generally unhappy at work. On November 11, 2021, Ms. Vincent talked with Ms. Reising individually and asked her how the employer could make things better. Ms. Reising stated that she was frustrated with another pharmacist, and she felt overworked and stressed due to the heavy workload caused by the COVID-19 pandemic.

On February 6, 2022, the employer held a mandatory meeting. Toward the end of the meeting, Ms. Vincent asked if anyone had questions or comments. Ms. Reising stated that she did not want to participate in the Medicaid billing process for the employer, and/or she needed another pharmacist to help her with the billing process.

The following week, Ms. Reising was on vacation leave. Before her leave, Ms. Reising left Ms. Vincent a note about a Medicaid billing issue. Ms. Vincent received the note, contacted the employer's corporate office, and received an answer to Ms. Reising's question while Ms. Reising was on leave. During that week, pharmacy technicians (techs) reported to Ms. Vincent that they were afraid to ask Ms. Reising questions. Ms. Vincent was concerned that if the techs could not ask Ms. Reising, a pharmacist, questions the techs would make mistakes that could pose a risk to customers.

Ms. Reising returned to work on February 23. Ms. Vincent spoke with Ms. Reising in the pharmacy around other employee about the question in Ms. Reising's note. Ms. Vincent told Ms. Reising the answer she had received from the employer's corporate office. Ms. Reising became upset and told Ms. Vincent that the employer needed to get their stuff in order and that this is not how things should be done. Ms. Reising eventually cooled down, but in Ms. Vincent's view, Ms. Reising's response to Ms. Vincent, was inappropriate because it was in front of other employees and could negatively impact morale. The interaction last two to three minutes.

Ms. Reising also worked as a pharmacist at another of the employer's stores. On February 24, management from the other store told Ms. Vincent that they were concerned about Ms. Reising's social media postings. Ms. Vincent viewed the postings and saw that Ms. Reising had posted that the job was difficult. Two other employees had also told Ms. Vincent that Ms. Reising was not happy in her job. Ms. Vincent told Mr. Cernin, Ms. Vincent's manager, about Ms. Reising's social media postings, Ms. Reising's interaction with Ms. Vincent on February 23, and Ms. Reising's unhappiness at work. Mr. Cernin did not view the social media postings. They agreed that they would meet with Ms. Reising the next day.

On February 25, Ms. Vincent and Mr. Cernin met with Ms. Reising. Mr. Cernin asked Ms. Reising about her February 23 interaction with Ms. Vincent. Ms. Reising apologized if her interaction was inappropriate. Mr. Cernin also asked Ms. Reising if she was happy in her job. Ms. Reising shrugged her shoulders and did not respond verbally. Mr. Cernin was concerned about Ms. Reising's unhappiness resulting in her making mistakes that could negatively impact customers. Mr. Cernin then told Ms. Reising that this is the end of her employment. Prior to this, Ms. Reising had no disciplinary record. Mr. Cernin testified that his decision to end Ms. Reising's employment was based on her being insubordinate to Ms. Vincent on February 23, and because her co-workers were on pins and needles around her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Ms. Reising from employment for no disqualifying reason.

On June 16, 2022, Governor Reynolds signed into law House File 2355, which among other things, amended Iowa Code 96.5(2) to redefine misconduct and to list specific acts that constitute misconduct. The bill did not include an effective date and so it took effect on July 1, 2022. See Iowa Const. art. III, § 26; Iowa Code § 3.7(1).

There is a strong presumption in U.S. jurisprudence against legislation being applied retroactively. “The principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal.” *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 855 (1990) (Scalia, J. concurring). This is in part because “elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly....” *Landgraf v. USI Film Prod.*, 511 U.S. 244, 265 (1994).

It would be fundamentally unfair and inconsistent with widely accepted legal principles to apply the amended Iowa Code 96.5(2) to the conduct at issue in this matter, which occurred before HF 2355 went into effect on July 1, 2022. As such, the amended Iowa Code 96.5(2) effective July 1, 2022 should not be applied to the conduct at issue here, and instead Iowa Code 96.5(2) as it existed at the time of the conduct will be applied.

Iowa Code section 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.

871 IAC 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.

The Iowa Supreme Court has held that this definition accurately reflects the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job 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 the claimant from employment, 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). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee’s act is misconduct does not rest solely on the interpretation or application of the employer’s policy or rule. A violation employer’s policy or rule is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case, the employer has failed to establish misconduct on the part of Ms. Reising. Ms. Reising being unhappy in her job is not misconduct. Regarding the February 23 interaction, the evidence shows that Ms. Reising was upset and expressed that feeling to Ms. Vincent. However, the employer has failed to establish that Ms. Reising’s actions rose to the level of misconduct. Because the employer has not established disqualifying misconduct, benefits are allowed, provided Ms. Reising is otherwise eligible.

Since Ms. Reising is eligible for UI benefits, the issues of overpayment and repayment are moot.

DECISION:

The April 21, 2022 (reference 01) UI decision is AFFIRMED. The employer discharged Ms. Reising from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
Administrative Law Judge

September 20, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> OR by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.