

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORI A HOESING

Claimant

HOLY SPIRIT RETIREMENT HOME

Employer

APPEAL 21A-UI-19604-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/04/21

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/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer, Holy Spirit Retirement Home, filed an appeal from the August 26, 2021, (reference 01) unemployment insurance decision that allowed benefits based upon the determination that the employer discharged claimant, Lori A. Hoelsing, but not for disqualifying misconduct. The parties were properly notified of the hearing. A telephone hearing was held on October 27, 2021. The claimant participated personally. The employer participated through testifying witnesses Arely Lugo and Kyla Sprakel. Employer's Exhibits 1 through 7 were admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a front desk receptionist from July 2, 2020, until this employment ended on July 8, 2021, when she was discharged.

Claimant had recently been transitioned to the front desk receptionist role at the time that her employment ended. She was upset about the transition because she felt it was unjustified. During her time as the front desk receptionist, her supervisor, Lugo, received a number of complaints about claimant's "attitude." She was spoken to twice in June about her attitude. She was not explicitly warned that continued similar conduct would result in her discharge. On one occasion in early June, she was told that additional disciplinary action, up to and including discharge, could be possible if her attitude problems persisted.

On July 8, 2021, claimant was called into Sprakel's office for a meeting with Lugo. They began to speak with claimant about her attitude again. Claimant responded, "Why don't you two just go ahead and let me go?" She became angry. Sprakel and Lugo did not feel that they could communicate with claimant in her heightened state. At some point, claimant left the office. She said some things loudly and used profanity. Claimant did not believe that any residents or family members were around to overhear the interaction. At some point, claimant was informed that she was being discharged. She later emailed the employer stating she intended to return to work. On July 12, 2021, the employer clarified via email that claimant's employment had been terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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 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 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). 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 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.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

The employer did not establish that it had warned claimant about conduct substantially similar to that which resulted in her discharge, or that it had explicitly warned claimant that her job was in jeopardy as the result of the conduct. Furthermore, the employer's testimony was inconsistent as to what occurred prior to claimant's discharge. It initially testified that claimant was discharged as the result of her outburst on the way out of the facility. Later, it testified that claimant was discharged during the meeting with Sprakel and Lugo, prior to the outburst on the way out of the facility. Ultimately, the employer has not established that claimant received adequate warning that her job was in jeopardy based on her conduct such that it would render the final incident disqualifying misconduct based on a disregard for the employer's policies. It also has not established that claimant engaged in conduct so egregious as to render the final incident disqualifying misconduct without prior warning. The employer has not carried its burden and no disqualification is imposed.

Because the separation was not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The August 26, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.



Alexis D. Rowe
Administrative Law Judge

November 10, 2021
Decision Dated and Mailed

ar/scn