

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

BARBARA M BROWN
Claimant

APPEAL NO: 19A-UI-03861-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 04/14/19
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct – Disciplinary Suspension
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 filed an appeal from the May 8, 2019, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 4, 2019. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Theresa McLaughlin. Dan Noack also testified.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant suspended for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a grocery clerk. The claimant was removed from the work schedule after being a no-call/no-show on March 28, 2019. The employer stated the claimant's schedule had previously been reduced in response to her attendance issues. No evidence was presented about specific attendance issues in the past or discipline rendered.

The claimant was unaware she had been removed from the schedule, and on April 4, 2019, the claimant spoke to Mr. Noack and he informed the claimant that they (the employer) needed to part ways until the employer spoke with her and her Genesis caseworker. Genesis is a third party who facilitates communication and support between the claimant and the employer. Mr. Noack did not elaborate whose responsibility it would be to contact Genesis about the meeting. No evidence was presented that there was a policy which required the claimant to

initiate the contact but Mr. Noack stated, "when she (the claimant) had trouble at work, she was supposed to contact Genesis."

The claimant established a claim for unemployment insurance benefits effective April 14, 2019. Upon learning that the claimant had filed her claim, Mr. Noack learned the claimant interpreted Mr. Noack's April 4, 2019 comments to mean that she had been fired. She told her casework at Genesis she had been fired. On May 10, 2019, Mr. Noack initiated a meeting with Genesis and the claimant. Upon completion of the meeting, the claimant was placed back on the schedule and continues to work for this employer.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$225.00, since filing a claim with an effective date of April 14, 2019. The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal. Maggie Worrall testified.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa unemployment insurance law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

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(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification. This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cospers vs. Iowa Department of Job Service and Blue Cross of Iowa*.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cospers 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

At issue is why the claimant did not perform work for the period of April 4 until May 5, 2019. Based on the evidence presented, the employer initiated the temporary separation from work by way of a removal from work because of alleged behavior employer is unwilling to tolerate of an employee. Thus, the separation is treated as a disciplinary suspension, which may be semantically equivalent to a disciplinary leave of absence. An employer may remove an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

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 reason the claimant failed to perform work between April 4 and May 10, 2019 was due to no meeting being set up to discuss the claimant's no-call/no-show on March 28, 2019. The employer removed the claimant from the schedule.

The employer in this case utilizes the claimant's case worker through Genesis to facilitate conversations about performance and work related issues. The credible evidence presented is that the employer told the claimant it would part ways with her until a meeting amongst the parties occurred. But the employer did not initiate the meeting with Genesis, nor did it direct the claimant to do so. Since there was unclear communication between the claimant and employer about the status of the employment relationship; the issue must be resolved by an examination of witness credibility and burden of proof. Because most members of management are

considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about employment status. Further, Mr. Noack demonstrated he could and would initiate contact with Genesis as he did after learning the claimant had filed for unemployment insurance benefits.

The employer's evidence as a whole failed to establish that the claimant's conduct in failing to contact Genesis after Mr. Noack's comment that they had parted ways violated any known company rule or that she her behavior constituted misconduct within the meaning of the law. As such, no disqualification is imposed. Benefits are allowed.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

DECISION:

The May 8, 2019, (reference 03) decision is affirmed. The claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn