

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAJESHREE SLJIVO
Claimant

**DIA APPEAL NO. 21IWDUI2017
IWD APPEAL NO. 21A-UI-03306**

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA WORKFORCE DEVELOPMENT
Employer

**OC: 11/1/2020
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 14, 2021 (reference 01) unemployment insurance decision that denied benefits based upon claimant's discharge from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on March 8, 2021 before Administrative Law Judge Laura Lockard. The claimant, Rajeshree Sljivo, was represented by attorney Stuart Higgins. The employer, Iowa Workforce Development, was represented by attorney Brooke Axiotis. The following persons testified: Barbara Corson; Kendra Mills; Kim Stoker; and Rajeshree Sljivo. The administrative law judge took administrative notice of the January 14, 2021 decision, the factfinding documents, and the claimant's appeal. Claimant's Exhibits 1 and 2 and Employer's Exhibits A through U were admitted as evidence.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Iowa Workforce Development as a full-time field auditor in January 2016. As a field auditor, Claimant was responsible for auditing businesses in her region to ensure that they were paying correct unemployment insurance taxes and correctly classifying workers. Starting in October 2016, Barbara Corson was Claimant's supervisor in the field audit unit.

In March 2020, IWD's field auditors, including Claimant, were reassigned to processing unemployment insurance benefit claims due to the COVID-19 pandemic. Claimant was in a group that helped process pandemic unemployment assistance (PUA) claims. Claimant had no experience with the benefits side of unemployment insurance prior to this reassignment.

Beginning in March 2020, Claimant and the other field auditors began working five 10-hour days per week, plus mandatory overtime on many Saturdays and occasional Sundays.

In order to prepare Claimant and the other field auditors for these temporary job duties, IWD provided an eight hour weekend training and a two hour webinar training, as well as a training video and a google spreadsheet on which they could ask questions. Additionally, most of the local offices had designated subject matter experts (SMEs) who were available to answer questions about claims processing. The SMEs were available on a group chat that employees could access. The SME available to Claimant was Daniel Noonan. Claimant estimated that she reached out to Noonan with questions on claims at least 10 to 15 times per day. (Exh. Q; Corson, Mills, Sljivo testimony).

For approximately three to four weeks around March 2020, Claimant was assigned to review documentation and approve PUA benefit claims. After that time, due to the influx of claims, Claimant and other field auditors were assigned to process PUA approvals. This involved Claimant taking income information that had already been reviewed and verified by a separate IWD employee and inputting it into an internal system in order to approve the claim. Claimant's role in this process was not to determine whether the individual claiming benefits was eligible; that determination had already been made through a prescreening process. Likewise, she was not responsible for determining the amount of verified income an applicant had; that step was completed before the claim came to her. Claimant was receiving a large volume of claims and processing them in batches of approximately 50 to 100 at a time. Claimant and her co-workers were encouraged to process as many claims as they could due to the heavy volume at this time. Corson encouraged Claimant to figure things out herself as the managers were all busy. The claims Claimant were processed were listed in a spreadsheet; the relevant information that Claimant needed was typically the applicant's social security number and the benefits they had been approved for. On many occasions, the application would be filed, the income verifier would verify the income, and the claim would come to Claimant to input but it would not yet show up in DBRO system that shows current claims. There was a separate system, Lotus Notes, where unprocessed applications would be listed before they appeared in the DBRO system. When these situations occurred, Claimant would have to ask for assistance from the SME in tracking down the claim. Once the claimant tracked down the claim, she was responsible to go back into the system and make sure it was paying out. There were a number of problems with the payment system and it could occasionally take a couple weeks to figure out why a claim was not paying out even if an individual had been approved. (Sljivo testimony).

On April 16, 2020, Claimant inquired in the group chat whether a claim for an individual with the initials A.S. had been received. Claimant did not recognize A.S. as someone she knew at the time she made this inquiry. She noted in her inquiry to the group chat that she had received his claim, which had been filed the day before, but it was still not in the system. Claimant asked whether, if the claim was filed yesterday, it should show up on DBRO. Kendra Mills, an investigator who was designated as an assistant SME on Claimant's group chat, responded that the claim would not be on DBRO yet as they were still working on unprocessed claims from April 13, 2020. Noonan responded that Claimant should check Lotus Notes to see if it showed up there. Claimant responded, "I don't [sic] have access to all apps[.]" Noonan responded, "I'll take a look." Based on Claimant's inquiry, Noonan subsequently expedited the processing of A.S.'s claim. (Exh. M).

IWD Work Rules¹

Claimant received a copy of IWD's work rules when she began work. Under the heading "Internal Security Work Instructions," IWD's work rules provide, in part:

5. No employee shall participate in taking, adjudicating, processing, accessing, or be involved in the claim of a relative, friend, co-worker or personal associate.

The work rules do not define the term personal associate. (Exh. C, p. 17).

IWD's work rules regarding honesty and integrity state, in part:

2. Dishonesty will not be tolerated. An employee must be honest when providing information to employees, management, and customers. This includes providing accurate and complete statements and documentation.

(Exh. C, pp. 10-11).

IWD's work rules also prohibit employees from using State property for personal business, including e-mails, computers, and internet. Specifically regarding technology, the work rules prohibit employees from using State internet access and computers for unauthorized, improper, malicious, or unethical purposes. Employees may only use State internet access and computers for official State business. The work rules also prohibit employees from transmitting confidential and sensitive information over the internet unless properly encrypted. (Exh. C, pp. 12-13).

Regarding discipline, the work rules provide that IWD will generally follow a progressive discipline approach when disciplining employees but reserves the right to use any available discipline, depending upon the severity of the incident. Progressive discipline typically involves a written reprimand, one-day suspension, three-day suspension, then termination. Some acts or omissions may result in immediate termination of employment, including dishonesty during an investigation. (Exh. C, pp. 17-18).

Claimant also received an Auditing for Compliance manual that governed her work as a field auditor. Regarding conflict of interest, the audit manual provides:

The auditor must inform his/her manager of any possible conflict of interest that he/she may have with the employing unit, employer, employer's representative, etc. If the employer is, for example, a friend, relative or business acquaintance, then the audit would be reviewed on a case by case basis and possibly be reassigned.

(Exh. E, p. 58).

On April 25, 2021, IWD director Beth Townsend sent an e-mail to all IWD employees stating:

Under NO circumstances should you open, adjust, review, alter or affect in any way claims of people who are your friends, family members or neighbors or an individual who asks you to do something for them as a favor. If those claims or

¹ The work rules in place at the time of Claimant's alleged misconduct are the July 2018 work rules that are referenced in this section. IWD's work rules were updated in July 2020. With the exception of the work rule regarding confidential information, the work rules cited did not change materially in July 2020.

questions come to you, you must immediately decline such requests and refer them to another employee or your supervisor. Taking such action is viewed as unauthorized access to our files and will lead to disciplinary action up to and including termination. Unauthorized access is nonnegotiable offense, per our work rules.

(Exh. F).

On April 4, 2020, Claimant asked Corson whether, if her husband applied for benefits, he could send his tax documents to someone who does not know Claimant. Corson routed this question up the chain to her bureau chief, who provided information to Claimant about who to route her husband's tax documents to in order to avoid a conflict of interest. (Exh. G).

Investigation

At some point during Claimant's reassignment to processing of PUA claims, Noonan brought concerns to his bureau chief, Justin Knudson, that Claimant had been asking questions about the status of the claims of several applicants in the group chat on a regular basis. The bureau chief enlisted the assistance of Mills to look into Noonan's concerns. As part of her investigation, Mills was directed to send over copies of all of the inquiries Claimant had made on the group chat feature; there were numerous applicants that Claimant asked questions about. (Mills testimony).

There was nothing about the inquiry Claimant made about A.S. that initially caused any suspicion by Mills. Knudson was the person who directed Mills to investigate this particular application, as well as others, further. As part of her investigation, Mills discovered that A.S. had listed his last employer as an individual with the same last name as Claimant and reported his last day worked as April 10, 2020. Mills also discovered during the investigation that Claimant had listed an individual with the same last name as A.S. as an emergency contact when she was hired with IWD in January 2016. (Exh. H, L; Mills testimony).

During the investigation, which included a review of Claimant's e-mails at least as far back as 2017, Mills found an e-mail that Claimant had sent to a case manager involved with her son's Medicaid benefits. Additionally, Mills found an e-mail that Claimant had sent to her work e-mail account from her personal e-mail account attaching a Social Security card and driver's license for her son's respite care provider, who was A.S. (Exh. I).

Claimant was placed on administrative leave on October 22, 2020. Claimant was not informed of the reason for her administrative leave. The letter she received informing her of the administrative leave indicated that IWD would be completing an investigation concerning allegations that she may have violated "work rules and/or policies." (Exh. A; Corson testimony).

Claimant was interviewed as part of IWD's investigation. At the beginning of the interview, Kim Stoker, human resources professional with IWD, read Claimant a list of ten names and asked her whether she knew each individual. Claimant was not given a written list of the names at first. A.S.'s name was among those read to Claimant. A.S. has a Bosnian surname and it is difficult for English speakers to pronounce; Stoker did not pronounce it correctly and did not spell it out as she read it. Claimant did not recognize the name when it was read to her. Additionally, Claimant knows A.S. by a different first name than his legal first name, which is the one that Stoker used.

Almost immediately after reading Claimant the names, Stoker showed Claimant a paper on which the names, including A.S.'s, were written. At that point, Claimant recognized A.S.'s name and

told Stoker that he was a former employee of hers; he had previously provided respite care for her son. Claimant had terminated A.S.'s employment as her son's respite provider in October 2019 and they did not part on good terms. (Claimant, Stoker testimony).

Claimant also confirmed during the interview that the person she listed as an emergency contact was A.S.'s wife or ex-wife. Claimant's husband was friendly at one point with A.S. and his ex-wife and his ex-wife offered to allow Claimant to use her as an emergency contact as Claimant did not know many people. Claimant never interacted socially with A.S. or his ex-wife. (Claimant testimony).

Claimant's Termination

On November 5, 2020, IWD terminated Claimant. In its termination letter, IWD asserted that Claimant had violated five work rules: 1) the internal security rule regarding involvement in claims of relatives, friends, co-workers, or personal associates; 2) dishonesty in the performance of duties and/or during an investigation; 3) prohibition on using state property for personal business; 4) prohibition on using state internet access for unauthorized purposes; and 5) prohibition against transmitting confidential and sensitive information over the internet unless properly encrypted. (Exh. B).

The termination was based upon Claimant's processing of A.S.'s claim in mid-April 2020, the employer's belief that she was dishonest when initially asked about A.S. during her investigative interview, the discovery that Claimant had engaged in correspondence regarding her son's Medicaid benefits from her work e-mail in September 2017 and had forwarded some documents from her personal e-mail to her work e-mail to print in August 2019, and the fact that the documents Claimant forwarded to her work e-mail in August 2019 contained a social security number. (Stoker, Corson testimony).

Performance Evaluations

Claimant received a written performance review from Corson on August 31, 2020, which covered the time period between August 21, 2019 and August 21, 2020. Claimant received a score of exceeds expectations for each of the three performance goals identified. She received an overall rating of exceeds expectations as well. Under one of Claimant's goal areas, Corson wrote:

Beginning in March of this year the auditors were asked to learn and perform many new tasks due to the COVID-19 virus crisis. Raji was always willing to learn these tasks and worked incredibly hard to become proficient as quickly as possible. She routinely provided guidance on these tasks to those team members who didn't learn as quickly. Additionally, despite this break in her usual work, Raji was one of the few auditors who exceeded monthly goals for both audits and workflows completed. In this evaluation period, although there were 5 months when she worked on these other tasks as well, Raji completed 1358 workflows, well over the 100 per month goal. In addition during this review period, Raji closed approximately 263 Business Closing/Missing Wage Investigations, nearly all of them timely. She makes excellent, fact-based decisions.

(Exh. 2).

Under the section for additional comments, Corson wrote, "Your great attitude and hard work ethic are an asset to this team and to the agency. The volume and quality of your work is an inspiration to the rest of your team." (Exh. 2).

Claimant also received an overall exceeds expectations rating on her 2017, 2018, and 2019 performance reviews. During 2016, her year of hire, she received an overall rating of meets expectations. (Exh. 2).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged from employment for a disqualifying reason. Benefits are allowed.

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) provides, in relevant part:

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). 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).

The primary driver of the employer’s decision to terminate Claimant’s employment was its belief that she had worked on the claim of someone who was known to her, in violation of IWD’s work rules, and its belief that she was dishonest during the course of the investigation into this allegation. The evidence reflects that Claimant was engaged in extremely high volume work processing claims in April 2020, work which she was unfamiliar with and that she had only been doing for several weeks at that time. Claimant was processing batches of between 50 and 100 claims at a time from a large spreadsheet and was encouraged to process as many claims as possible. During the course of this work, Claimant processed the claim of A.S., who had previously worked for her family as a respite care provider for her son. Claimant provided credible testimony at hearing that she did not recognize A.S.’s name when she was processing his claim. She knew him by a different first name and she credibly testified that his last name is a relatively common Bosnian surname. I do not conclude, based on the credible evidence in the record, that Claimant recognized that she was acquainted with A.S. at the time she processed his claim.

The employer argued at hearing that because A.S. was ultimately approved for regular unemployment insurance benefits rather than PUA, Claimant’s handling of the claim was outside of her assigned job duties. Mills testified that Claimant could only have known about the claim if A.S. contacted her directly. The evidence reflects that A.S. filed a claim for PUA, despite ultimately being approved for regular unemployment insurance benefits. A.S. was not ultimately approved for PUA as he was eligible for regular unemployment insurance benefits; PUA is only available to individuals as a last resort if they do not qualify for regular unemployment insurance benefits. There is absolutely no evidence, however, that Claimant’s processing of A.S.’s claim occurred outside of her normal job duties. She received the PUA claim in the regular course of her duties from one of the PUA income verifiers and took the same steps on A.S.’s claim as she would have taken for any other applicant. Claimant asked about A.S.’s claim one time on the group chat as she could not find it on the DBRO system after she received the income verification. Based on that single inquiry, Noonan made the decision to expedite A.S.’s claim. Claimant did not make any request for A.S.’s claim to be expedited; she made the inquiry about the claim in the routine performance of her job duties. The employer presented no credible evidence that Claimant’s handling of A.S.’s claim was other than routine or that she took action on the claim that another employee would not have taken in the regular course of business.

There is nothing in the record to support the conclusion that Claimant’s conduct with regard to A.S.’s claim reflected an intentional and substantial disregard of the employer’s interest. The record reflects that Claimant was an exemplary employee for more than four years prior to the pandemic. She was required to pivot without a great deal of training to a job that was completely different and she completed a high volume of work, as her performance evaluation shows, with a great attitude and a willingness to learn. Where Claimant believed there would be a conflict of interest, as in the case of her own husband’s claim, Claimant took steps to ensure that the employer’s conflict of interest rules were followed. Claimant handled A.S.’s claim exactly as she would have handled anyone else’s claim; the decision to expedite the claim was not made by Claimant and was not requested by Claimant.

It is worth noting here that IWD's work rules do not define the term personal associate. The April 25, 2020 e-mail from Director Townsend reminding employees not to be involved in claims of certain persons they know referenced friends, family members, and individuals asking for favors. It is disputed by the parties whether A.S. fits into any of the categories under which Claimant would have been prohibited from working on his claim. Claimant argues that, as a former employee with whom she maintained no ongoing relationship, A.S. is neither a friend nor a personal associate. Ultimately, the resolution of this question is not critical to the determination of whether Claimant is entitled to unemployment insurance benefits. As discussed above, Claimant did not recognize A.S.'s name when she processed his claim. Even if she had, however, the term personal associate is sufficiently vague that Claimant not categorizing her relationship with A.S. as such would not have displayed the kind of deliberate disregard of the employer's interest sufficient to justify a finding of misconduct.

Regarding the employer's argument that claimant's dishonesty during its investigation forms a basis for a finding of misconduct, the evidence does not support the conclusion that Claimant was being dishonest when she initially stated during the interview that she did not know A.S. All of the witnesses at the hearing, apart from Claimant, struggled to pronounce A.S.'s last name correctly. Claimant's testimony that she did not recognize A.S.'s name until seeing it in writing is credible. Once she saw A.S.'s name in writing, Claimant acknowledged that she knew him. This does not form the basis for a finding of misconduct.

Finally, Claimant's incidental violations of the prohibition against using state property for personal business and the technology policy regarding confidential information do not warrant a finding of misconduct. These transgressions were so minor that the employer was not even aware of them until it conducted an in-depth review of all of Claimant's e-mails as part of the investigation into A.S.'s claim. These incidents do not display the type of willful or wanton disregard of an employer's interest that is required to support a finding of misconduct.

The employer has failed to meet its burden of proof in establishing disqualifying job-related misconduct. As such, benefits are allowed.

DECISION:

The January 14, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was not discharged from employment for any disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Laura E. Lockard
Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division
515-281-0414

3-18-21

Decision Dated and Mailed

CC: Stuart Higgins (email and mail)
Nicole Merrill, IWD (email)
Joni Benson, IWD (email)