

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LOVIA S TROTTER
Claimant

HY-VEE INC
Employer

APPEAL 21A-UI-07774-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/03/21
Claimant: Appellant (4-R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(12) – Supplemental Part-time Employment

STATEMENT OF THE CASE:

On March 12, 2021, Lovia S. Trotter (claimant) filed an appeal from the March 2, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination Hy-Vee, Inc. (employer) discharged her for engaging in conduct that was not in its best interest. The parties were properly notified about the hearing held by telephone on May 26, 2021. The claimant participated personally. The employer participated through Lacy Rumsey, District Human Resources Manager, and Mark Pearson, Assistant Manager, and it was represented by Barbara Buss from Corporate Cost Control. No exhibits were offered into the record. During the hearing, the parties waived notice on the issue of supplemental part-time employment under Iowa Code section 96.5(12).

ISSUES:

Did the employer discharge the claimant for job related misconduct?
Was the claimant separated from part-time employment?

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 Customer Service Clerk beginning on February 1, 2020, and was separated from employment on November 6, when she was discharged. The employer has a policy prohibiting employees from bringing weapons to work. The claimant received a copy of that policy as part of the employee handbook.

On November 6, Mark Pearson, Assistant Manager, received a report from another Customer Service Clerk that the claimant had shown her a handgun that she had in her purse at work. Pearson approached the claimant who admitted she had the handgun and showed it to him.

Pearson took possession of the claimant's purse and escorted her to her vehicle. The employer ended her employment due to violation of its prohibition against weapons at work.

The claimant filed her claim for unemployment insurance benefits effective January 3, 2021, and her base period includes full-time employment with United Parcel Service (048497). The administrative record shows that the claimant has not requalified for benefits since this separation, but she appears to be otherwise monetarily eligible for benefits after this part-time employer's wages are excluded from the base period.

The claimant filed her claim for benefits when she was unable to work full-time due to heart issues. Whether the claimant is able to and available for work has not been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from part-time employment for disqualifying misconduct, and has not requalified but appears to be otherwise monetarily eligible. Benefits are allowed, provided she is otherwise eligible.

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(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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer has a substantial interest in maintaining a workplace free of violence. One of the steps the employer has taken to protect its interest is prohibiting employees from bringing weapons to work. The claimant brought a weapon to work and showed it to a co-worker. The claimant disregarded the employer's interests and disregarded the reasonable expectations the employer has a right to expect from its employees. This is disqualifying misconduct, even without prior warning.

Iowa Code section 96.5(12) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

12. Supplemental part-time employment. If the department finds that an individual is disqualified for benefits under subsection 1 or 2 based on the nature of the individual's separation from supplemental part-time employment, all wages paid by the supplemental part-time employer to that individual in any quarter which are chargeable following a disqualifying separation under subsection 1 or 2 shall not be considered wages credited to the individual until such time as the individual meets the conditions of requalification as provided for in this chapter, or until the period of disqualification provided for in this chapter has elapsed.

Workers who are disqualified from part-time employment based upon the reason for the separation may be eligible to receive reduced unemployment insurance benefits, provided they have sufficient wage credits from other base-period employers to remain monetarily eligible, and provided they are otherwise eligible. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016); codified on July 2, 2017, at Iowa Code § 96.5(12). In this event, the part-time employer's

account will not be assessed for benefits paid to claimant and the employer's wage credits will not be considered in determining benefits for claimant until he or she has requalified by having worked in and been paid wages for insured work equal to ten times their weekly benefit amount.

The claimant's separation is disqualifying and she has not requalified for benefits since the separation. However, she appears to be otherwise monetarily eligible according to base period wages. Thus, she may be eligible for benefits based upon those other wages. The claimant's maximum and weekly benefit amounts will be redetermined until requalification. This may result in an overpayment of benefits.

Additionally, whether the claimant is able to and available for work with her full-time employer is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision to include the claimant and United Parcel Service.

DECISION:

The March 2, 2021, reference 01, unemployment insurance decision is modified in favor of the appellant. The claimant was discharged for misconduct, and she has not requalified for benefits; however, she appears to be otherwise monetarily eligible. Benefits are allowed, provided she is otherwise eligible. The account of this part-time employer (006858) shall not be charged.

REMANDS:

The claim is remanded to the Benefits Bureau for redetermination consistent with this decision.

Whether the claimant is able to and available for work with her full-time employer is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision to include the claimant and United Parcel Service.



Stephanie R. Callahan
Administrative Law Judge

June 10, 2021
Decision Dated and Mailed

src/scn