

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TINO A JOHNSON

Claimant

SEDONA STAFFING INC

Employer

APPEAL 21A-UI-13160-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/29/20

Claimant: Respondent (5)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On February 3, 2021, Sedona Staffing Inc. (employer/appellant) filed an appeal from the January 25, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on November 25, 2020 without a showing of misconduct.

A telephone hearing was held on August 9, 2021. The parties were properly notified of the hearing. Tino Johnson (claimant/respondent) did not register a number for the hearing or participate. Employer participated by UI Administrator Colleen McGuinty. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Was the separation from employment disqualifying?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

Claimant initially began working for employer on April 30, 2020. This continued until September 24, 2020, when he was hired on permanently by a client. Claimant returned to work for employer on December 22, 2020. He continued to be employed there until March 9, 2021. At that time he was discharged for failing a drug screen prior to starting a new assignment. Employer has a zero-tolerance policy for drug screen failures.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal was timely. The January 25, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on November 25, 2020 without a showing of misconduct is MODIFIED with no change in effect.

Iowa Code § 96.6(2) provides, in pertinent part:

“[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

Employer did appeal the decision within ten calendar days. The administrative law judge therefore has jurisdiction to address the underlying issues.

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 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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v.*

Emp't Appeal Bd., 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

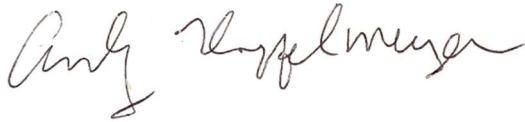
Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The Court in *Tow v. Truck Country of Iowa, Inc.*, 695 N.W.2d 36, 39 (Iowa 2005) held that a discharge from employment may be based on an employee drug-testing program only if that program is being carried out in compliance with the governing statutory law. Iowa Code section 730.5 sets forth the circumstances under which employers may legally drug test an employee. Employers may conduct testing of prospective employees. However, the administrative law judge finds claimant was not a prospective employee. He was already an employee of the employer at the time the testing took place. There are provisions for testing of current employees as well, but none of the circumstances allowing such testing is present here. There is no provision in applicable law that allows for testing in advance of an assignment. As such, claimant's failure of the test cannot form the basis of disqualifying misconduct.

The earlier separation on September 24, 2020 was not disqualifying, either, as claimant resigned to accept employment elsewhere. The decision is modified solely to reflect that neither separation nor the separation on May 9, 2021 were disqualifying.

DECISION:

The administrative law judge concludes the employer's appeal was timely. The January 25, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on November 25, 2020 without a showing of misconduct is MODIFIED with no change in effect. Neither of the separations set forth above was disqualifying. Benefits are therefore allowed, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
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August 17, 2021
Decision Dated and Mailed

abd/kmj