

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANN M PRINCE
Claimant

ABCM CORPORATION
Employer

APPEAL NO. 22A-UI-07044-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/13/22
Claimant: Appellant (2)**

Iowa Code § 96.5-2(a) – Termination for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 2, 2022, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 29, 2022. Claimant participated. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue in this matter is whether claimant was terminated for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 11, 2022. Claimant was terminated from her position after that date as she did not agree with employer's mitigation.

Claimant worked as a part time activities assistant for employer. Employer instituted a vaccination requirement for all employees. Claimant claimed and was granted a religious exemption. In order that employer would grant the religious exemption, claimant had to agree to a series of mitigation actions including, avoiding all large group settings, and wearing a well-fitting mask at all times outside of the home; Covid testing before each shift; maintain distance from staff and residents at all times; and sanitizing hands before and after touching any surface. Claimant believed these restrictions to not allow her to go to her child's high school sports. Additionally, she felt that she couldn't participate in normal activities and games with residents as she would be too close – even wearing a mask, and would have to sanitize after every dice roll of a game.

The other option employer gave to claimant was to have her convert her role to a landscaper during the appropriate seasons. Claimant has no experience in this area. Claimant would not have a job during the offseason.

REASONING AND CONCLUSIONS OF LAW:

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. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Code Section . 96.5A provides –

Refusal of COVID-19 Vaccination — No Disqualification. Notwithstanding any other provision of this chapter to the contrary, an individual who is discharged from employment for refusing to receive a vaccination against COVID-19, as defined in section 686D.2, shall not be disqualified for benefits on account of such discharge.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

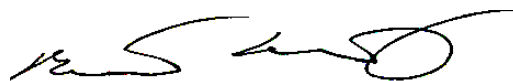
The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant refused to sign on to employer's policies for those who are granted exemptions from Covid vaccinations. Claimant was exempted by employer. Employer then created unreasonable policies that had the effect of excluding claimant from watching her child play high school sports – whether or not she wore a mask. Additionally, employer's policy would have required constant hand sanitizing and being masked at all times when away from home. Finally, claimant was to be isolated from all other coworkers – even though she would be masked. Claimant's only other option was to take seasonal employment in a job she had no experience. When claimant refused employer's unreasonable requests, she was terminated.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant simply refused unreasonable requests. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated March 2, 2022, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

May 12, 2022
Decision Dated and Mailed

bab/scn