

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAQUON DAVIS
Claimant

SLB OF IOWA LC
Employer

APPEAL 20A-UI-15285-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

SLB of Iowa, LC, the employer/appellant, filed an appeal from the November 13, 2020, (reference 04) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 25, 2021. The employer participated through Karen Beard, human resources manager. Mr. Davis did not participate. Employer's Exhibits 1-5 were admitted into evidence. Official notice was taken of the administrative record.

ISSUE:

Was Mr. Davis discharged for disqualifying job-related misconduct?
Was Mr. Davis overpaid benefits and should he have to repay the benefits?
Should the employer's account be charged?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Davis began working for the employer on March 3, 2020. He worked as a full-time baker apprentice. His last day of work was March 5, 2020 when he was separated from employment.

Mr. Davis submitted an application to the employer on February 25, 2020. Employer's Exhibit 1. In the application, Mr. Davis agreed that he would not withhold information, that omissions or misrepresentations of facts may result in separation from employment and that any job offer would be conditioned on a criminal background check. *Id.* That same day, Mr. Davis submitted his answers to the employer's prescreening questions. Employer's Exhibit 5. Mr. Davis answered "Yes" to the question: "Do you currently have any pending criminal charges against you, or have you ever been convicted of, pled guilty or no contest to, been placed on probation, fined, imprisoned or incarcerated, or paroled for any offense, other than minor traffic violations?"

Id. Mr. Davis did not provide any additional information in response to the prompt to "...please explain the circumstances for each charge or offense..." *Id.*

Based on his application and answers to the prescreening questions, a recruiter contacted Mr. Davis for a prescreening interview. The recruiter asked Mr. Davis "What would we find on your background check?" Employer's Exhibit 4. Mr. Davis responded that the employer would find a misdemeanor marijuana offense from 2018. *Id.* Based on the prescreening interview, the employer interviewed Mr. Davis in-person and hired him, conditioned on a background check. Mr. Davis began working for the employer on March 3.

On, or about March 3, Mr. Davis consented to a background check. Employer's Exhibit 2. In his consent, Mr. Davis answered "No" to the question: "Have you ever been convicted of, pled guilty, no contest or nolo contendere, to a misdemeanor or felony...?" *Id.* The consent form provides that "Failure to honestly answer these questions will result in...termination of employment." *Id.*

On March 4, 2020, the employer received the results of a background check of Mr. Davis from CareerBuilder Employment Screening. Employer's Exhibit 3. The results confirmed that Mr. Davis had a pending misdemeanor marijuana charge and a May 3, 2019 deferred judgment. The results also showed the Mr. Davis had a pending felony robbery charge and a 2019 deferred judgment issued on the same day as the misdemeanor marijuana charge. Mr. Davis' employment was terminated on March 5 for failing to disclose the robbery offense during the interview process and for not meeting the employer's background check standard. After terminating his employment, the employer informed Mr. Davis via email of the results of the background check and that he has the option to dispute the results of the background check. Mr. Davis did not respond to the employer.

The employer's background check standard is to consider the seriousness and nature of the offense, date of the offense and position applied for.

Mr. Davis received \$0.00 in REGULAR unemployment insurance (UI) benefits and \$0.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits. The employer had the opportunity to and participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Davis was discharged from employment due to job-related misconduct.

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 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). 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).

The employer has presented substantial and credible evidence that Mr. Davis failed to disclose the pending robbery charge and May 3, 2019 deferred judgment in violation of the agreement he signed on his job application and despite the warning on the background check consent form. Mr. Davis disclosed one offense – the marijuana offense – but did not disclose the other offense – the robbery offense – even though deferred judgments were entered on both charges on the same day. Mr. Davis was on notice from the application, his conditional job offer and the background check consent form that his employment depended on him disclosing information about his background. His failure to disclose the pending robbery charge and deferred judgment amounted to disqualifying misconduct. Benefits are denied.

The administrative law judge further concludes Mr. Davis has not been overpaid REGULAR UI benefits and he is not eligible FPUC benefits.

Iowa Code §96.3(7) provides, in pertinent part:

7. *Recovery of overpayment of benefits.*

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal

to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

Mr. Davis is not qualified and/or was ineligible to receive REGULAR UI benefits. Since Mr. Davis has received \$0.00 in REGULAR UI benefits, he has not been overpaid REGULAR UI benefits.

Because Mr. Davis is disqualified from receiving REGULAR UI benefits, he is also disqualified from receiving FPUC benefits.

DECISION:

The November 13, 2020, (reference 04) unemployment insurance decision is reversed. Mr. Davis was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Mr. Davis has not been overpaid REGULAR UI benefits and he is not eligible for FPUC benefits.



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February 10, 2021
Decision Dated and Mailed

dz/ol