

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**PATRICIA ALLEN**  
Claimant

**ADVANCE STORES COMPANY INC**  
Employer

**APPEAL 21A-UI-06011-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (2)**

---

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Patricia Allen (claimant) appealed an Iowa Workforce Development February 17, 2021, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Advance Stores Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2021. The claimant participated personally. The employer was represented by Jackie Boudreaux, Hearings Representative, and participated by Mike Schmitt, District Manager.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file. 21A-UI-06010.S1 and 21A-UI-06011.S1 were heard at the same time.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 27, 2013, as a full-time retail parts manager. She worked forty hours per week and the employer paid her \$15.25 per hour. It did not issue her any written warnings.

At some point, the employer reduced her hours to thirty-two or thirty-five hours per week, based on business needs. The claimant filed for unemployment insurance benefits with an effective date of March 22, 2020. Her weekly benefit amount (WBA) was determined to be \$391.00. The claimant received no benefits as of March 22, 2020.

A disqualification decision was mailed to the parties' last known address of record on May 18, 2020. The claimant received the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 28, 2021. The appeal was filed on February 22, 2021, which is after the date noticed on the decision. The

claimant decided not to file an appeal to the decision after a manager told her that working thirty-two hours per week was considered full-time.

On December 7, 10, and 14, 2020, unknown workers complained about the claimant to the employer. The claimant requested and was granted vacation from December 24, 2020, through January 4, 2021. On January 5, 2021, the district manager told the claimant some statements the unknown co-workers were saying about her. This was the first the claimant had heard the statements. The claimant told the employer the statements were untrue. The district manager had never heard the claimant make the statements. On January 6, 2021, the employer terminated the claimant for statements that unknown co-workers heard. It did not terminate the claimant for weeks after the complaints because it was investigating.

### **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 Admin. Code r.871-24.32(8) provides:

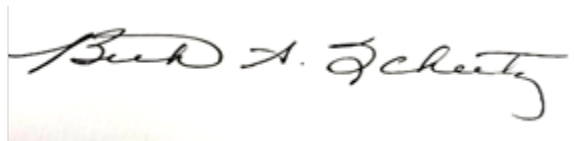
(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last complaint provided by the employer occurred on December 14, 2020. The claimant was not discharged until January 6, 2021. The employer terminated the claimant twenty-three days from the last complaint, twenty-nine days from the first complaint. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony or written statements. It provided neither. The employer did not provide any evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed as of January 3, 2021.

**DECISION:**

The representative's February 17, 2021, decision (reference 02) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed as of January 3, 2021, provided the claimant is otherwise eligible.



---

Beth A. Scheetz  
Administrative Law Judge

June 4, 2021  
Decision Dated and Mailed

bas/kmj