

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PAUL A COPELAND**  
Claimant

**PANORAMA COMMUNITY SCHOOL**  
Employer

**APPEAL 20A-UI-09691-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/20**  
**Claimant: Respondent (1)**

Iowa Admin. Code r. 871-24.32(1)A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On August 6, 2020, Panorama Community School (employer/appellant) filed an appeal from the July 28, 2020 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed from work on April 6, 2020, but a review of the record did not show willful or deliberate misconduct.

A telephone hearing was held on September 28, 2020. The parties were properly notified of the hearing. Employer participated by Principal Liz Ratcliff. Business Manager Symantha Crawford and Superintendent Shawn Holloway participated as witnesses for employer. Paul Copeland (claimant/respondent) participated personally.

Employer's Exhibits 1-6 were admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

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

Claimant worked for employer as a full-time custodian. Claimant's first day of employment was April 13, 2015. The last day claimant worked on the job was March 13, 2020. Claimant's immediate supervisor was Custodial Supervisor Don VanWinkle. Claimant worked in the elementary building. Claimant separated from employment on April 6, 2020. Claimant was discharged by employer's board of directors on that date. See Exhibit 6.

Claimant was discharged due to poor performance. Employer could not say what the most recent incident leading to discharge was. Employer simply said there was a pattern of claimant performing poorly over his entire employment and it finally reached a point where employer felt discharge was warranted.

Claimant was formally reprimanded on August 29, 2019. On that date, VanWinkle provided the written reprimand from Holloway to claimant and told him it was his last chance. The reprimand was based on an August 28, 2019 report to VanWinkle that rooms had not been satisfactorily cleaned. There were photos attached with the reprimand which showed a toilet, rug, and floor that had not been cleaned. Claimant acknowledges not properly cleaning the floor and toilet on that date due to oversight. See Exhibits 3 and 4. At that time, a list of claimant's work duties was provided to him. See Exhibit 5. This was the only formal reprimand claimant received.

Mr. Holloway and Ms. Ratcliff did not personally counsel claimant on his performance. They would instead bring issues with claimant's performance to Mr. VanWinkle or to claimant's coworker, Charlie, who they believed would then address those with claimant. Claimant acknowledges an issue being brought to him in November 2019. He was not formally reprimanded at that time. Teachers in claimant's building had brought complaints to Ratcliff about poor cleaning in November and December 2019 and January 2020, but those complaints did not reach claimant. Employer did not offer those complaints as proposed exhibits nor provide testimony from VanWinkle or claimant's coworker.

Claimant was surprised when he was informed he would be discharged. He knew after the warning in August 2019 that his job was in jeopardy. However, since he had not been warned or counseled since November 2019, approximately five months prior, he did not believe he was in danger of being discharged.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the July 28, 2020 (reference 01) unemployment insurance decision that allowed benefits is **AFFIRMED**.

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).

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2).

Claimant was discharged by employer's board of directors on April 6, 2020. At that time, it had been over six months since his only prior formal reprimand, on August 29, 2019. Claimant acknowledges having been informally counseled by VanWinkle again in November 2019. Employer alleges claimant was informally counseled by VanWinkle and a coworker again after that date. However, claimant credibly testified that he was not counseled after that date; Ratcliff and Holloway acknowledged they did not personally counsel claimant; and employer did not offer those complaints as proposed exhibits nor provide testimony from VanWinkle or claimant's coworker. Based on this evidence, the administrative law judge finds claimant was not counseled after November 2019.

While there were complaints about claimant's performance after that date, it is not clear what those were or whether they were valid. This is because employer did not provide those complaints or specific testimony regarding them and claimant had no knowledge of them, which would have allowed him an opportunity to respond to or otherwise explain the alleged issues. Given these facts, claimant was understandably surprised when he was discharged, as he had no indication of issues with his performance for nearly six months.

While the administrative law judge understand why employer did not wish to keep claimant in its employ, it has not met its burden of showing the discharge was based on a current act of substantial misconduct. The administrative law judge finds claimant's discharge was therefore not disqualifying, and benefits are allowed.

**DECISION:**

The July 28, 2020 (reference 01) unemployment insurance decision that allowed benefits is **AFFIRMED**. Claimant is not disqualified from and is eligible for benefits, provided he meets all other eligibility requirements.



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Andrew B. Duffelmeyer  
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September 30, 2020  
Decision Dated and Mailed

abd/scn