IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

PATRICIA O SZYMAN Claimant **MILL CREEK MACHINING INC** Employer	**APPEAL 21A-UI-03391-AD-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/25/20** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On January 18, 2021, Patricia Szyman (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated January 11, 2021 (reference 02) that denied benefits based on a finding claimant voluntarily quit work on October 9, 2020 for personal reasons.

A telephone hearing was held on March 16, 2021. The parties were properly notified of the hearing. The claimant participated personally. Mill Creek Machining Inc. (employer/respondent) participated by HR Manager Kelli Larsen. GM Justin Stamer participated as a witness for employer.

Claimant's Exhibits 1-3 were admitted. Official notice was taken of the administrative record.

ISSUES:

I. Was the separation from employment 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 quality control manager. Claimant's first day of employment was April 27, 2020. The last day claimant worked on the job was October 2, 2020. Claimant's immediate supervisors were Stamer and Plant Manager Chuck Oppedal. Claimant formally separated from employment on October 10, 2020. The parties signed a severance agreement at that time.

The incident leading to separation occurred on October 2, 2020. On that date, claimant went into Oppedal's office to ask for assistance with sorting parts. As claimant was speaking with Oppedal, she caught a glimpse of his phone out of the corner of her eye. Claimant saw what she believed was naked flesh on his phone. She then looked again and realized it was a pornographic image. Claimant was shocked but was unsure how to proceed and returned to work. That afternoon she

contacted Larsen to report what had occurred. Larsen indicated at that time that an investigation would be performed.

The following morning, a Saturday, claimant sent Larsen an email confirming severance language that was put in place at the time of her hiring. Claimant wanted to confirm this language would include any situation where her employment ended through no fault of her own. She sought confirmation of this because the language was initially included following a discussion about what would happen if claimant separated due to an economic downturn caused by the pandemic. Larsen responded by asking claimant if her employment had ended, to which claimant replied it had not and that she planned to return to work on Monday, October 12, 2020. Larsen replied that the severance language was a "safety net" in case of a business downturn and that the situation was still under investigation. Employer was ultimately unable to confirm claimant's allegations through its investigation.

Larsen contacted claimant later on October 3, 2020 and indicated employer had decided after consultation with legal counsel to offer a separation agreement to claimant. Larsen also directed claimant not to return to work the following week. Larsen believed claimant's questions about and references to the separation agreement were indications that she no longer wished to work for employer; however, at no time did claimant indicate she was going to resign or otherwise refuse to return to work. Claimant would have continued working had employer not offered the separation agreement. Claimant did not believe she had a choice to return to work after that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated January 11, 2021 (reference 02) that denied benefits based on a finding claimant voluntarily quit work on October 9, 2020 for personal reasons is REVERSED.

As an initial matter and for the reasons set forth below, the administrative law judge finds the separation was initiated by employer and so is best analyzed as a discharge. While Larsen believed claimant's questions about and references to the separation agreement were indications that she no longer wished to work for employer, at no time did claimant indicate she was going to resign or otherwise refuse to return to work. She instead indicated that she planned to return to work on Monday, October 12, 2020. Larsen contacted claimant later on October 3, 2020 and indicated employer had decided after consultation with legal counsel to offer a separation agreement to claimant. Larsen also directed claimant not to return to work the following week. Claimant would have continued working had employer not offered the separation agreement. However, claimant reasonably believed that she had no choice about returning to work after that time.

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).

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). There is no allegation that claimant's discharge was due to misconduct and no evidence in the record suggesting it was. Claimant's separation from employment is therefore not disqualifying and she is eligible for benefits, provided she meets all other eligibility requirements.

The administrative law judge finds in the alternative that if claimant's separation was a voluntary resignation, she had a good cause reason for resigning attributable to employer. The evidence in the record is that claimant saw a pornographic image on her supervisor's phone during work hours. Claimant offered credible, firsthand testimony in support of the allegation, including being able to describe the events of that day and the image she saw with specificity.

While the administrative law judge understands employer was not able to confirm the allegation in its investigation, the evidence supports the events did occur as alleged by claimant. Employer did not offer testimony of similar credibility and reliability effectively rebutting claimant's allegations, such as firsthand testimony from Oppedal. The administrative law judge finds a reasonable person would have found the conditions of employment so intolerable or detrimental as to justify resignation, and so there was good cause for resignation attributable to employer.

DECISION:

The January 11, 2021 (reference 02) that denied benefits based on a finding claimant voluntarily quit work on October 9, 2020 for personal reasons is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible.

Andrew B. Duffelmeyer
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March 19, 2021
Decision Dated and Mailed

abd/ol