

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLIE M PEMBELE
Claimant

IOWA PREMIUM LLC
Employer

**APPEAL 20A-UI-05203-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/29/20
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the May 28, 2020 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 30, 2020, at 1:00 p.m. Claimant participated. French interpretation was provided by Djenane (ID 11925) from CTS Language Link. Employer participated through Maria Hackenmiller, Employment Manager. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time production worker from November 28, 2017 until her employment with Iowa Premium ended on April 30, 2020. On March 30, 2020, employer suspended claimant for two days (March 30 – 31, 2020) for job performance issues. Claimant returned to work on April 1, 2020. At that time, employer changed claimant's job assignment. On April 2, 2020, employer suspended claimant for not following instructions in the performance of her job. Employer could not provide any detailed information about claimant's failure to follow instructions or any indication that claimant's failure to follow instructions or adequately perform her job was intentional. Employer was closed from April 2, 2020 until April 30, 2020 due to Covid-19. On April 30, 2020, employer discharged claimant for unsatisfactory job performance. Claimant had prior written warnings regarding her job performance. Other factors that led to employer's decision to discharge claimant was her attendance and tardiness. Employer could not provide any detailed information about claimant's attendance or tardiness including the date of the most recent occurrence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(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.

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.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra; *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Employer discharged claimant for job performance issues during the course of her employment. Employer has not established that claimant's failure in job performance was intentional. Employer has not provided detailed facts as to the specific reason for claimant's discharge like the instructions claimant failed to follow on April 2, 2020 or the date and reason for claimant's most recent absence or tardiness. Employer has not met its burden of proving a current act of disqualifying job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible

DECISION:

The May 28, 2020 (reference 02) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.



Adrienne C. Williamson
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July 10, 2020
Decision Dated and Mailed

acw/scn