

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JENNY E. YORDY**  
Claimant

**ANNETT HOLDINGS INC.**  
Employer

**APPEAL 22A-UI-03483-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/19/21  
Claimant: Respondent (1)**

Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

On January 25, 2022, the employer/appellant filed an appeal from the January 21, 2022, (reference 01) unemployment insurance decision that allowed benefits because there was no misconduct. The parties were properly notified about the hearing. A telephone hearing was held on March 4, 2022. Claimant participated at the hearing. Employer participated through Steve Linder. Exhibit 1 was admitted into the record. Administrative notice was taken of claimant's unemployment insurance benefits records.

**ISSUES:**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Should claimant repay benefits?
- III. Should the employer be charged due to employer participation in fact finding?
- IV. Is the claimant overpaid benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 1, 2021. Claimant last worked as a full-time Senior Product Manager. Claimant was separated from employment on December 17, 2021, when she was discharged due to poor work performance.

When the employer hired claimant they were aware that she did not have prior leadership experience. The employer informed claimant they would coach her in her new role. Claimant was in a probationary period for 90-days. During the course of her employment claimant was

coached by Mr. Linder, however, Mr. Linder was never satisfied with her work performance during the course of claimant's employment. Claimant was struggling in her communication and leadership abilities for the employer. This led to attrition with other employees. The employer put claimant on a Performance Improvement Plan on November 8, 2021. (Exhibit 1, pg. 4). The employer continued to be unsatisfied with claimant's performance. The employer discharged claimant on December 17, 2021.

Claimant filed for benefits with an effective date of December 19, 2021. Claimant's weekly benefit amount is \$551.00. Claimant began receiving benefits on week ending December 25, 2021, and continued receiving benefits through week ending February 19, 2022. Claimant has received a total of \$4,408.00 in state unemployment benefits.

The employer participated in fact-finding by submitting a written response to Iowa Workforce Development's questions. The employer also provided the Performance Improvement plan.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy. However, if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

Iowa Admin. Code r. 871-24.32(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986). The employer agreed that in the six months that claimant worked in the Senior Product Manager position claimant never had a sustained period of time during which she performed her job duties to employer's satisfaction. Claimant informed the employer prior to her hiring that she did not have any experience leading a team. Claimant did attempt to perform the job to the best of her ability but was unable to meet the employer's expectations. As a result, no intentional misconduct has been established by the employer. Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed. Benefits are allowed. The employer's account is subject to charge.

Since claimant is eligible for benefits the issues of whether claimant was overpaid benefits, whether claimant should repay benefits, and whether the employer participated in the fact-finding interview is moot.

**DECISION:**

The January 21, 2022, (reference 01) unemployment insurance decision is AFFIRMED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

The issues of whether claimant was overpaid benefits, whether claimant should repay benefits, and whether the employer participated in the fact-finding interview is moot since claimant is entitled to benefits.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive, flowing style. Below the signature, there is a faint, small, illegible stamp or mark.

---

Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

March 22, 2022

Decision Dated and Mailed

cs/mh