

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LEVI SEDLACEK
Claimant

SHARPLESS AUCTION INC
Employer

APPEAL 21A-UI-09215-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/14/21
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

On April 1, 2021, Sharpless Auction Inc. (employer/appellant) filed an appeal from the March 29, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was discharged on December 21, 2020 without a showing of misconduct.

A telephone hearing was held on July 9, 2021. The parties were properly notified of the hearing. Employer participated by Manager Brad Ahlvers. Levi Sedlacek (claimant/respondent) did not register a number for the hearing or participate.

Employer's Exhibits 1 and 2 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 part-time laborer. Claimant's first day of employment was December 1, 2020. Claimant's immediate supervisor was Ahlvers. The last day claimant worked on the job was December 14, 2020. Claimant was discharged by Ahlvers on that date.

Claimant was discharged because of issues with his availability. Claimant had no set schedule and was not expected to be available during certain days or times; work was simply offered as it was available. The ad that claimant responded to indicated work was available for 20 to 30 hours per week, which claimant was willing to do. In the days leading up to discharge, claimant communicated with Ahlvers on two or three occasions that he could not work. This was because Ahlvers had requested he work every day that week, which claimant was not able to do. Claimant was willing to continue working 20 to 30 hours per week as the job posting indicated would be the arrangement. However, Ahlvers was frustrated with claimant's lack of availability and determined it was better to part ways at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the March 29, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was discharged on December 21, 2020 without a showing of misconduct is AFFIRMED.

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

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). Benefits are therefore allowed, provided claimant is not otherwise disqualified or ineligible.

While the administrative law judge understands employer’s frustration with claimant’s availability and the decision that it was better to “move on,” there was no set schedule and claimant was not expected to be available during certain days or times. Furthermore, the ad that claimant responded to indicated work was available for 20 to 30 hours per week, which claimant was willing to do. Claimant’s expressing to employer that he was not available more than that is not misconduct.

Because benefits are allowed, the other issues noticed need not be addressed.

DECISION:

The March 29, 2021 (reference 01) unemployment insurance decision that allowed benefits based on a finding claimant was discharged on December 21, 2020 without a showing of misconduct is **AFFIRMED**.



Andrew B. Duffelmeyer
Administrative Law Judge
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July 20, 2021
Decision Dated and Mailed

Ad/ol