

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENISE HILL
Claimant

APPEAL 20A-UI-00908-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN ORDNANCE LLC
Employer

**OC: 12/15/19
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
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 31, 2020, American Ordnance LLC (employer) filed an appeal from the January 21, 2020 (reference 02) unemployment insurance decision that determined Denise Hill (claimant) was eligible to receive unemployment insurance benefits.

A telephone hearing was held on February 17, 2020. The parties were properly notified of the hearing. Employer participated by HR Director Mike Allbee. Claimant participated personally.

Official notice was taken of claimant's payment history on the unemployment insurance system.

ISSUE(S):

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

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 melt operator. Claimant's first day of employment was January 28, 2019. The last day claimant worked on the job was December 17, 2019. Claimant's immediate supervisor was Jacob Goble. Claimant separated from employment on December 17, 2019. Claimant was discharged by Allbee on that date.

On December 5, 2019, statements were submitted to Allbee alleging claimant had violated employer's policy prohibiting sexual harassment. That policy prohibits unwelcome sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature. Claimant

was aware of the policy. Allbee undertook an investigation into the allegations. This included interviewing claimant and several other employees. It was alleged claimant had spanked a male coworker, grabbed a male employee's chest, offered to send photographs of herself to male coworkers, and made comments about younger male coworkers being "little boys."

Claimant acknowledged there was some age-related "banter" between herself and younger, male coworkers. This consisted of coworkers teasing her about her being older than them and her calling younger, male coworkers "little boys." She also acknowledged that she once touched a male coworker on the shoulder and a coworker suggested he should spank her on her birthday. None of her coworkers indicated to claimant that they were offended by her conduct.

Allbee determined claimant had violated its policy prohibiting sexual harassment and discharged her. Claimant had never previously been disciplined for conduct of this nature. Employer did not provide live testimony from coworkers with first-hand knowledge of the allegations leading to termination. Neither did it provide statements, notes, or other documents related to the investigation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the January 21, 2020 (reference 02) unemployment insurance decision that determined claimant is eligible for benefits 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The burden is on employer to prove that claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Employer has not carried its burden in this case.

Claimant provided credible, first-hand testimony in which she largely denied the allegations leading to her discharge. While Allbee's testimony was also credible, it was not first-hand testimony. Employer did not provide live testimony from coworkers with first-hand knowledge of the allegations leading to termination. Neither did it provide statements, notes, or other documents related to the investigation or Allbee's findings. While this type of evidence is not always required to prove misconduct, in this case the evidence presented is insufficient to prove misconduct.

Claimant does acknowledge there was some age-related "banter" between herself and younger, male coworkers. While this conduct was not work-appropriate and the administrative law judge in no way endorses it, this age-related "banter" does not appear to have been the reason for the discharge. Even if it was, employer has failed to show this "banter" rose to the level of work-related misconduct.

The administrative law judge notes the issue in this case is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. Conduct warranting discharge is not necessarily serious enough to warrant a denial of job insurance benefits.

Because employer has failed to meet its burden of proving claimant's discharge was due to substantial job-related misconduct, claimant is not disqualified from receiving benefits. Because claimant is not disqualified, the other issues listed in the notice of appeal need not be addressed.

DECISION:

The January 21, 2020 (reference 02) unemployment insurance decision is AFFIRMED. Claimant is eligible for benefits, so long as she meets all other eligibility requirements.

Andrew B. Duffelmeyer
Administrative Law Judge
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Decision Dated and Mailed

abd/scn