

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LESLIE TEGHANEMT
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 19A-UI-00357-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/16/18
Claimant: Appellant (2R)**

Iowa Code §96.5(2)a – Discharge Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 3, 2019, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for excessive unexcused absenteeism. The parties were properly notified about the hearing. A telephone hearing was held on January 29, 2019. Claimant participated and testified. Claimant was represented by attorney Siobhan Briley. Employer elected not to participate.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 15, 2002. Claimant last worked as a full-time senior application developer. Claimant was separated from employment on December 14, 2018, when she was discharged.

In October 2018 claimant was summoned to appear for jury duty on October 9, 2018. Claimant was on unpaid medical leave from employment at the time. When claimant received her summons and questionnaire she saw the instruction that she was supposed to call the evening before to see if her number had been called. Claimant testified she forgot about this instruction and did not call in, but instead reported to the courthouse on the morning of October 9.

According the claimant, when she arrived she waited in a lobby with a large group of people. Claimant testified she did not check in or go through any jury orientation. According to claimant she left with the rest of the group when they broke for lunch, but returned that afternoon. Claimant was not called to sit for a jury or be questioned as a possible jury member at any time. Claimant testified the jury pool was never excused because around 4:00 p.m. tornado sirens went off. According to claimant everyone just left and no one was instructed to seek shelter. Claimant further testified that, after receiving a text message from her employer on October 9,

she requested documentation from courthouse staff, but was told they did not provide such documentation.

A few days later, claimant received a call from the employer. The employer told claimant it had called the Clerk of Court, who reported claimant's jury number was not called to report, and asked her what happened. This was significant to the employer because jury duty would remove claimant from unpaid status and return her to paid status. Claimant explained the situation, but the employer felt she was being dishonest and told her they were going to investigate further. Claimant was not sure what this investigation entailed, but did not hear any additional information from the employer until December 14, 2018, when she was separated from employment. Claimant did not know why the investigation had taken so long, but noted the decision to discharge her came after she filed a discrimination complaint with the Iowa Civil Rights Commission.

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).

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, but 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. 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.

Here, it is difficult to believe claimant's version of events regarding her October 9 jury service for a variety of reasons. It seems very unlikely that jurors would be left waiting in a lobby area, without having to check in or go through any sort of juror orientation, for an entire day, only to be left to leave the courthouse during a weather emergency, rather than courthouse personnel directing them to shelter. Additionally, it is hard to imagine a situation in which court staff would be asked about providing documentation of jury service and not mention that claimant could request a voucher to be reimbursed for her service under Iowa Law.

However, 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 lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." Where an employer gives seven days' notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011).

Here, the employer questioned the veracity of claimant's version of events at the time they were occurring, as evidenced by the text message sent to claimant and decision to call and confirm the jury summons with the courthouse. The employer questioned claimant about the incident several days later and informed her it would be investigating the situation. It was not until more than two months later that claimant learned she was being separated from employment based on the October 9 incident. No explanation was given for the delay and by the time claimant was discharged the act for which she was discharged was no longer current. As the employer has not established a current act of misconduct, benefits are allowed.

During the hearing claimant indicated she had been off work due to a medical condition at the time of and for several months prior to her separation. Accordingly, the issue of whether claimant is able to and available for work must be remanded to the benefits bureau for an initial investigation and determination.

DECISION:

The January 3, 2019, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

REMAND:

The issue of whether claimant is able to and available for work effective December 16, 2018 is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs