

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBIN L BJORNSON

Claimant

APPEAL 19A-UI-09847-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 10/27/19

Claimant: Respondent (2)

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 December 12, 2019, Casey's Marketing Company (employer) filed an appeal from the December 4, 2019 (reference 01) unemployment insurance decision that determined Robin Bjornson (claimant) was eligible to receive unemployment insurance benefits.

A telephone hearing was held on January 23, 2020. The parties were properly notified of the hearing. Employer participated by Area Supervisor Julie Burk. Claimant did not register a number for the hearing and did not participate.

Official notice was taken of claimant's payment history on the unemployment insurance system and the administrative file, including the fact-finding documents. Employer's Exhibits 1-5 were admitted.

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 store manager. Claimant's first day of employment was February 16, 2005. The last day claimant worked on the job was October 31, 2019. Claimant's immediate supervisor was Burk. Claimant separated from employment on October 31, 2019. Claimant was discharged by Burk on that date.

Burk discharged claimant because she failed to report an incident where an employee was sexually harassed and assaulted by a customer at the store claimant managed. Burk learned of

the incident when claimant contacted her on October 28 to inform her that the employee had quit. Burk began inquiring as to why the employee had quit, and learned at that time of the incident. Burk learned claimant had not conducted an investigation or reviewed video of the incident, either. Burk reviewed video and saw that on October 22, a customer came into the store, grabbed the employee from behind, and made a gyrating motion with his hips. The employee tried to pull away and the customer initially did not let go. Claimant admitted the employee had reported this to her on October 24. Employer's Exhibit 1.

Claimant had completed training that made clear she was required to immediately report harassment to her manager or human resources once she became aware of it. Employer's policies prohibit harassment. See Exhibits 4, 5.

Burk viewed claimant's failure to report the incident as part of a pattern of insubordination. Claimant had previously been disciplined on July 12, 2019 for failing to ensure her employees had completed required training. See Exhibit 2. She was also disciplined on August 29, 2019 based on complaints about her demeanor from customers, vendors, and employees. See Exhibit 3.

The unemployment insurance system shows claimant's weekly benefit amount is \$500.00. She has not received any benefits in the current claim year.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the December 4, 2019 (reference 01) unemployment insurance decision that determined claimant was eligible for benefits is REVERSED. Claimant is not eligible for benefits until she has earned wages for insured work equal to ten times her weekly benefit amount.

- 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 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). Even without taking the prior disciplinary actions into account, claimant's failure to immediately report an employee being sexually harassed and assaulted by a customer constitutes substantial job-related misconduct. Claimant's failure to report the incident likely caused the employee's quitting.

Had Burk not inquired as to the reason for the employee's quitting, employer may never have learned of the incident. Furthermore, claimant's failure to report the incident or take any investigative or corrective action could have opened the employer to substantial liability. Claimant knew or should have known based on her training, experience, and common sense that she needed to immediately report the incident. Her failure to do so, and the fact that it was only learned of based on Burk's questioning, constitutes substantial job-related misconduct.

II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

The unemployment insurance system shows claimant's weekly benefit amount is \$500.00. She has not received any benefits in the current claim year. Claimant has not been overpaid benefits.

DECISION:

The December 4, 2019 (reference 01) unemployment insurance decision is **REVERSED**. Claimant is not eligible for benefits until she has earned wages for insured work equal to ten times her weekly benefit amount.

Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

Decision Dated and Mailed

abd/scn