

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHANIE KIRKPATRICK

Claimant

INSIGHT PARTNERSHIP GROUP, LLC

Employer

**CASE NO. 22IWDUI0042
IWD APPEAL NO. 21A-UI-19004**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 7/18/2021
Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Stephanie Kirkpatrick filed a timely appeal from an August 23, 2021, unemployment insurance decision that denied unemployment benefits because she was discharged from work on July 21, 2021, for violation of a known company rule. A telephone hearing was held October 21, 2021. The parties were properly notified of the hearing. Kirkpatrick appeared and testified. She was self-represented. Insight Partnership Group, LLC (Insight) was represented by Amy White, chief operating officer.

Official notice was taken of the documents in the administrative file. The parties did not submit additional exhibits.

ISSUE:

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:

Stephanie Kirkpatrick was employed as a full-time life skills specialist at Insight. She began working at Insight on December 8, 2020. Her employment was terminated on July 22, 2021, by Shelby Frank and Gabby McLeland. Kirkpatrick provided services to dependent adults in their home. Shelby Frank was Kirkpatrick's direct supervisor. (White testimony.)

White was not present when Kirkpatrick's employment was terminated, and she was not involved in the investigation that resulted in termination. Insight became aware of Kirkpatrick's alleged violation of policies in March 2021. White was unsure when an investigation began, and Kirkpatrick's employment was not restricted in any way during the investigation. According to White, Kirkpatrick attended a coaching session on March 11, 2021, and was told she had crossed boundaries with some of the dependent adults. White was not at this coaching session. (White testimony.)

Kirkpatrick received a letter from Insight when her employment was terminated, but the letter was not submitted to the administrative record. Frank drafted the letter. Insight terminated Kirkpatrick's employment based on the following allegations: taking pictures of a dependent adult; purchasing items for dependent adults; giving a photograph to a dependent adult; and massaging a dependent adult's feet. (White testimony.)

Kirkpatrick provided care for three dependent adults in their shared home. She was trained by a co-worker for a few weeks, but she cared for the adults by herself after this brief training. One of the adults Kirkpatrick assisted occasionally gave Kirkpatrick her camera and asked Kirkpatrick to take her picture. Kirkpatrick did this, but Kirkpatrick never took pictures with her personal camera or phone or posted any pictures online. She stopped taking pictures of this adult when she was told to stop. Kirkpatrick brought a photo of herself taken 20+ years ago because one of the adults liked to view photographs. She did not know this was against company policy. (Kirkpatrick testimony.)

Kirkpatrick admitted she purchased small gifts for the three adults in December 2020, because she wanted them to have holiday gifts. She did this less than a month after her employment began and did not know it was a violation of company policy. Kirkpatrick also admitted she hugged one

of the adults she worked with once because the adult opened up to Kirkpatrick and started crying. Kirkpatrick contacted Frank and told her about the incident, and she was not reprimanded. She painted the adults' fingernails, but she denied ever giving any of the adults in the home a foot massage. (Kirkpatrick testimony.)

Kirkpatrick was never told about any investigation regarding her continued employment at Insight. She denied a coaching session occurred on March 11 and said she only received favorable reviews from her employer. She had not received any warnings and did not believe her job was in jeopardy when her employment was terminated. (Kirkpatrick testimony.)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the August 23, 2021, unemployment insurance decision that found Kirkpatrick ineligible for unemployment insurance benefits is reversed.

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.

Iowa Administrative Code rule 871-24.32(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 Dep't of Job Serv.*, 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). Alleged violations of known company rules must rise to the level of misconduct to disqualify an individual for unemployment benefits. See *Billingsly v. Iowa Dep't of Job Serv.*, 338 N.W.2d 538 (Iowa Ct. App. 1983). The final incident leading to the decision to discharge must be a current act of misconduct. See *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 629 (Iowa Ct. App. 1988).

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 the employer 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. See *Billingsly*, 338 N.W.2d 538.

Kirkpatrick provided credible testimony she was fired from Insight on July 21, 2021, without previous warnings from her employer. White did not terminate Kirkpatrick's employment and did not have direct knowledge of when any of the allegations resulting in Kirkpatrick's termination occurred. While White noted an investigation happened prior to Kirkpatrick's termination, Kirkpatrick's employment was not restricted in any way during the investigation. White did not

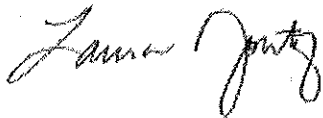
provide the termination letter given to Kirkpatrick when her employment was terminated and did not provide any employment manuals or documents detailing company rules.

Frank, Kirkpatrick's direct supervisor, is still employed at Insight and likely could have testified at the administrative hearing. Some of the allegations that resulted in Kirkpatrick's July 2021 termination occurred in December 2020, and Insight failed to present any evidence of a current act of misconduct. I find Kirkpatrick's alleged acts of misconduct may rise to the level of good faith errors in judgment but most likely are the result of Insight's failure to properly train employees on company policies. I do not find her actions rise to the level of misconduct.

Insight did not satisfy its burden of proof required to disqualify Kirkpatrick from unemployment insurance benefits. Because Insight failed to establish disqualifying misconduct, benefits are allowed provided Kirkpatrick is otherwise eligible.

DECISION:

The August 23, 2021, unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



Laura Jontz
Administrative Law Judge

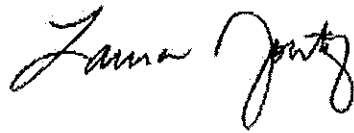
October 29, 2021

Decision Dated and Mailed

CC: Stephanie Kirkpatrick, Claimant (by first class mail)
Insight Partnership Group, LLC, Employer (by first class mail)
Natali Atkinson, IWD (by email)
Joni Benson, IWD (by AEDMS)

Case Title: KIRKPATRICK V. INSIGHT PARTNERSHIP GROUP LLC
Case Number: 22IWDUI0042
Type: Order

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Laura Jontz", written in a cursive style.

Laura Jontz, Administrative Law Judge