

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTY L CASEY
Claimant

HOUGHTON STATE BANK
Employer

APPEAL 21A-UI-19633-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/20/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On September 1, 2021, Kristy Casey (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated August 23, 2021 (reference 01) that disqualified claimant from receiving unemployment insurance benefits based on a finding she was discharged from work on June 8, 2021 for violation of a known company rule.

A telephone hearing was held on October 27, 2021. The parties were properly notified of the hearing. The claimant participated personally. Houghton State Bank (employer/respondent) participated by Britni Bergren. President Karl Bormann participated as a witness for employer.

Official notice was taken of the administrative record.

ISSUES:

- I. Was the separation from employment 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 began working for employer in 1997. She was employed as a full-time teller since 2006. Her most recent immediate supervisor was Kim Docker. The last day claimant worked on the job was June 8, 2021. Claimant was discharged on that date.

Claimant was discharged due to overdrafting her account on May 27, 2021 and asking a coworker the following day to reverse the overdraft fees. Employer's handbook provides that overdrafting an account is subject to discipline. It does not prohibit reversing overdraft fees. However, it is an FDIC violation for employees to do so.

Claimant was aware that that overdrafting an account was frowned upon but was not aware that it would result in discharge. She was unaware that having a coworker reverse an overdraft fee

was an FDIC violation. Employer sent a company-wide email approximately nine months earlier stating the same. However, claimant did not recall receiving the email. Claimant and other coworkers had done both things in the past on several occasions without warning, counseling, or discipline. The overdraft was due to claimant's tax payment being withdrawn earlier than she expected. She deposited funds to cover the overdraft the following day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated August 23, 2021 (reference 01) that disqualified claimant from receiving unemployment insurance benefits based on a finding she was discharged from work on June 8, 2021 for violation of a known company rule is REVERSED.

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 Dept 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 Dept 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).

The administrative law judge notes employer testified claimant had been previously warned regarding overdrafting. However, it provided no first-hand testimony or documentary evidence in support of this contention. On the other hand, claimant provided credible first-hand testimony that no prior warning had occurred. Factual findings were made accordingly.

The administrative law judge finds employer's policies regarding overdrafting and overdraft fees were not clearly communicated and consistently enforced and as such claimant was not on sufficient notice that the prohibited conduct could result in discharge. Claimant's conduct is therefore best described as an isolated, good faith error in judgment or discretion that does not rise to the level of disqualifying misconduct.

DECISION:

The decision dated August 23, 2021 (reference 01) that disqualified claimant from receiving unemployment insurance benefits based on a finding she was discharged from work on June 8, 2021 for violation of a known company rule is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account is subject to charge.



Andrew B. Duffelmeyer
Administrative Law Judge
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November 10, 2021
Decision Dated and Mailed

abd/scn