

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RACHEL GRAHAM
Claimant

MAHASKA COUNTY HOSPITAL
Employer

APPEAL 21A-UI-03874-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/11/20
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On January 25, 2021, Rachel Graham (claimant/appellant)¹ filed a timely appeal from the Iowa Workforce Development decision dated January 19, 2021 (reference 01) that denied benefits based on a finding claimant was discharged from work on October 12, 2020 for misconduct.

A telephone hearing was set for March 18, 2021. At that time, the parties agreed to a continuance in order for a subpoena to be issued for fact-finding documents. A subpoena was requested and issued and fact-finding documents were provided by the department to the parties.

A continued hearing was set for April 19, 2021. The parties were properly notified of the hearing. The claimant participated personally and was represented by Attorney Chandler Surrency. Mahaska County Hospital (employer/respondent) participated by Chief Human Resource Officer Sarah Dickey and was represented by Attorney Stacie Codr.

Claimant's Exhibit 3 was admitted. Employer's Exhibits A-E were admitted. Official notice was taken of the administrative record, including the fact-finding documents.

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 on November 19, 2018. Claimant was employed full-time in the food service department. Claimant's immediate supervisor was Wanda Hamm. The last day claimant was present at the job performing work was October 12, 2020. Claimant was discharged by Dickey and CFO Gene Williamson on that date.

¹ The administrative law judge notes claimant's name has recently changed to Rachel Rickheim.

Claimant was discharged due to violating employer's Standards of Behavior. Claimant acknowledged receiving and reading that document at or about the time of hire and understanding she was expected to uphold the standards. The standards require, among other things, that employees work together to achieve shared goals and treat others with honesty and respect.

Claimant was suspended for three days on July 21, 2020 due to creating an environment in the department which made others feel unsafe and bullied and made them not want to come to work. This included swearing at coworkers, showing her middle finger to coworkers, directing people not to assist coworkers with impairments with their job duties, ridiculing coworkers, and being disrespectful to Hamm. This complaint was brought by a coworker and investigated by employer. Employer determined claimant had engaged in the conduct as alleged.

Around mid-August 2020, claimant reported that Hamm had made discriminatory comments about her based on an actual or perceived impairment. During the course of this investigation, more coworkers came forward to report feeling unsafe and bullied by claimant. It was also discovered during the course of this investigation that claimant had sent an email to one of employer's HR representatives on or about June 30, 2020 from a coworker's email account, posing as the coworker and praising claimant.

Based on these additional findings regarding claimant's conduct, employer decided to discharge claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated January 19, 2021 (reference 01) that denied benefits based on a finding claimant was discharged from work on October 12, 2020 for misconduct is AFFIRMED.

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.*

Claimant generally denied that she engaged in any of the conduct which led to her discharge. However, the administrative law judge did not find these denials to be credible. Claimant was often evasive and gave qualified answers in response to straight-forward questions, including frequently asking that questions be repeated and stating that she “did know how to answer” questions. This indicates claimant was not fully and truthfully responding to questions.

Claimant’s testimony was also inconsistent, calling into question the reliability and again the credibility of that and other testimony. Of note, in response to questions about whether she used profanity at work, she initially testified that she had not but then later said she did not believe she had. It is difficult to believe that claimant would be unable to recall whether or not she had used profanity at work.

Claimant also offered inconsistent and incredible answers in response to questioning regarding what motivation coworkers may have for fabricating the claims which led to her discharge. She initially suggested coworkers had fabricated the allegations to save their jobs. However, she was unable to explain how such fabrications would accomplish that. She also testified that she was still friends with one of the coworkers who brought complaints about her and that the coworker would refute allegations brought by employer. However, claimant did not offer testimony from that coworker in support of this contention.

On the other hand, the testimony by employer was consistent, credible, and reliable. It was also supported at least in part by contemporaneous documentation. Factual findings were made accordingly.

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).

The administrative law judge finds claimant did engage in conduct which made others feel unsafe and bullied and made them not want to come to work. This conduct was in violation of the Standards of Behavior which claimant was aware of and agreed to uphold. It also constituted a substantial disregard of employer’s interests. Claimant is therefore disqualified from benefits.

DECISION:

The decision dated January 19, 2021 (reference 01) that denied benefits based on a finding claimant was discharged from work on October 12, 2020 for misconduct is AFFIRMED. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Fax (515) 478-3528

April 26, 2021
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.