

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRAD M YOUNG

Claimant

S D H SERVICES WEST LLC

Employer

APPEAL 21A-UI-18990-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/16/21

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from the August 16, 2021 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 20, 2021. Claimant did not participate. Employer participated through Peggy Leight, Hearing Representative, and Daniel Clayton, Operations Manager. Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time Lead Food Worker from December 5, 2019 until his employment with S D H Services West ended on May 17, 2021, when employer discharged claimant for harassing a coworker in violation of a company policy after having been warned. The final incident occurred on April 23, 2021, when claimant sent a text message to a coworker. Neither party was at work during the time the message was sent; the subject of the text message was not work-related. The coworker had previously asked claimant to stop contacting her. Employer directed claimant to have no further contact with claimant unless it was work-related. Employer does not recall the date it became aware of the April 23rd text. Claimant last performed work for employer on May 7, 2021. Claimant was on a disciplinary suspension from May 7, 2021 until May 17, 2021. Employer does not recall how much time passed between learning of the text and claimant's suspension.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible. .

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 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(1)(a) provides:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

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 cannot be based on such past act or acts. The termination of employment must be based on a current act.

Conduct asserted to be disqualifying misconduct must be 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). Whether the act is current is measured by the time elapsing between the employer's awareness of the misconduct and the employer's notice to the employee that the conduct provides grounds for dismissal. *Id.* at 662.

Claimant's April 23rd text message to his coworker is misconduct. The coworker asked claimant to stop contacting her. Claimant had been warned by employer to have no further non-work-related contact with his coworker. Claimant's text message was not work-related. Claimant's actions violated a known company policy.

However, employer has not established that the text message was a current act. The message was sent on April 23, 2021. It is unknown when the text message came to employer's attention. Claimant was suspended on May 7, 2021. Two weeks elapsed between the text message and claimant's suspension. The text message was no longer a current act. Employer has not met its burden of proving claimant was discharged for a current act of misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Because claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot.

Because claimant is eligible for regular unemployment insurance benefits, claimant is also eligible for Federal Pandemic Unemployment Compensation. See PL 116-136 §2104(B).

DECISION:

The August 16, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot. Claimant is eligible for Federal Pandemic Unemployment Compensation.



Adrienne C. Williamson
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November 5, 2021
Decision Dated and Mailed

acw/kmj