

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDON M MEYER
Claimant

APPEAL 21A-UI-08925-ML-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STRYTEN MANUFACTURING LLC
Employer

**OC: 02/21/2021
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On March 27, 2021, claimant/appellant filed a timely appeal from the Iowa Workforce Development decision dated March 25, 2021 (reference 01) that found claimant is disqualified from receiving unemployment insurance benefits. A telephone hearing was held on May 25, 2021. The parties were properly notified of the hearing. The claimant, Brandon Meyer, participated personally. The employer, Stryten Manufacturing, LLC, participated through Laura Scharosch.

ISSUE:

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 was employed full-time as a Maintenance Technician for the employer. Claimant's first day of employment was June 10, 2014. The last day claimant worked on the job was February 21, 2021. The employer discharged claimant on February 22, 2021. Claimant's immediate supervisor was Ron Benner.

Employer prohibits smoking in the workplace outside of the designated smoking areas. Employer also requires employees to wear personal protective equipment (PPE) in specific areas. Employer maintains policies prohibiting employees from being in areas without PPE for the health and safety of its employees. The policies are outlined in the employee handbook and regularly discussed at safety meetings. Claimant received a copy of the handbook when he was hired; however, he does not remember signing off on receipt of the same. Claimant testified that the PPE policy is widely known.

On January 20, 2021, claimant used a personal vaporizer or "vape pen" in the production facility in violation of the employer's policy. On that same day, claimant was in an area where he was prohibited from being in without wearing proper PPE. More specifically, claimant was not wearing his respirator, or "air helmet." Claimant was also using a piece of lead as a hammer, which,

although common, is similarly prohibited. The series of events was captured on surveillance camera and discovered by Engineering and Maintenance Manager, Micah Berger. The same was relayed to Ms. Scharosch and the decision was made to terminate claimant.

On January 22, 2021, Ms. Scharosch called claimant and informed him that he was being discharged for failing to wear his required PPD. During the phone conversation claimant acknowledged and admitted to the events that took place on January 20, 2021. Claimant asked the employer if there was anything he could do to save his job. Mrs. Scharosch told claimant there was not. Claimant had no prior warnings or disciplinary action.

The employer has a progressive disciplinary policy. An employee's first offense warrants a verbal warning. An employee's second offense warrants a written warning. An employee's third offense warrants a suspension without pay and the possibility of a final warning. Lastly, an employee is terminated following his or her fourth offense. The employer is within their discretion to skip any or all steps. The employer acknowledged claimant did not receive any verbal or written warnings prior to discharge, but provided that claimant was terminated for the severity of the January 20, 2021, violation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated March 25, 2021 (reference 01) that found claimant is disqualified from receiving unemployment insurance benefits 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 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.*

In the matter at hand, there is no evidence that claimant had any prior disciplinary action.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

In this case, claimant's actions were not misconduct. They were an isolated incident of poor judgment and claimant is guilty of no more than "good faith errors in judgment." 871 IAC 24.32(1)(a). Instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Services*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App. 1986). His actions were not an intentional and substantial disregard of the employer's interest which rises to the level of willful misconduct. As such, benefits are allowed.

DECISION:

The decision dated March 25, 2021 (reference 01) that found claimant is disqualified from receiving unemployment insurance benefits is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account shall be charged.



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

June 4, 2021
Decision Dated and Mailed

mjl/kmj