

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GARRETT A HARPER
Claimant

BUNN-O-MATIC CORPORATION
Employer

APPEAL NO. 17A-UI-12224-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/29/17
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 21, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 18, 2017. Claimant participated personally. Employer participated by Suzanne Johnston, Janet Schulte, and Stephanie Blazek. Employer's Exhibits 1-9 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 16, 2017. Employer discharged claimant on October 16, 2017 because claimant did not timely pick his orders nor timely inform his supervisor that he needed assistance on timely picking orders after being warned multiple times about doing so.

Claimant worked as a materials handler for employer, picking products to fill orders. Claimant often was able to work within the two hour time frame created by employer to have orders picked. When he was not able to do so, claimant occasionally would go to his supervisor to ask for assistance in getting orders timely picked.

Often claimant did not timely pick orders and did not ask for assistance. This created a backlog for employer. Claimant was warned on multiple occasions that he needed to notify his supervisor if he needed assistance in timely picking orders. Claimant stated that he was already working hard to pick orders so he couldn't take time to alert his supervisor that he needed assistance. On October 10, 2016, claimant once again did not get his orders timely picked and did not notify his supervisor such that assistance could be given to claimant. Claimant was terminated for this last act.

REASONING AND CONCLUSIONS OF LAW:

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(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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning notifying a supervisor if orders couldn't be picked in a timely basis. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew what procedures he was to follow as he'd received initial instructions and multiple warnings for not following the procedures. At times, claimant did act in the correct manner. But all too often, claimant would not follow proper procedures, even after multiple warnings. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated November 21, 2017, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn