IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

RONALD D CHITTICK Claimant **SADLER POWER TRAIN** Employer	**APPEAL 15A-UI-14349-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 12/06/15** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 24, 2015, (reference 01) unemployment insurance decision that denied benefits based upon his discharge from employment for misconduct. The parties were properly notified of the hearing. A telephone hearing was held on January 19, 2016. The claimant, Ronald D. Chittick, participated personally. The employer, Sadler Power Train, participated through Dave Stastney, Dave Paulsen, and Adam Sadler. Claimant's Exhibit A was received and admitted. Employer's Exhibits 1 through 7 were received and admitted.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a warehouse manager from December 22, 2008 until his employment ended on December 8, 2015. Claimant's work hours were typically from 7:30 a.m. to 5:00 p.m., Mondays through Fridays. His job duties included supervising warehouse employees and drivers, organizing and preparing the various loads, keeping the warehouse clean, maintaining supplies and putting away inventory.

On Tuesday, December 8, 2015, the claimant was driving a fork lift when his supervisors Adam Sadler and Dave Paulsen had approached him. Mr. Sadler confronted the claimant about why he had not answered his telephone calls and texts. The previous weekend, Mr. Sadler had texted the claimant "what time can we meet up tomorrow" (referring to Sunday, December 6, 2015). The claimant responded "I have a lot of things going on tomorrow Sunday December 6, there is no way that I can come in I will be there early on Monday." Claimant is not required to work overtime or come in on the weekends. His job duties do not include being "on call" after his regularly scheduled hours. See Employer's Exhibit 2.

This confrontation on December 8, 2015 became very heated between Mr. Sadler and the claimant. Mr. Paulsen witnessed the confrontation and testified that both men had raised voices, that Mr. Sadler was using profane language but the claimant was not and that the claimant had shaken his finger at Mr. Sadler stating to "go ahead and fire me and see what happens." Mr. Sadler told the claimant that if he texts him over the weekends he has to respond no matter what. The claimant stated that his scheduled hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, and that the rest of the time is his own personal time. The two then discussed the claimant's various absences from work and the claimant said that Mr. Sadler had approved all those times he took off. The claimant asked for Dave Stastney, the human resources representative, to be involved.

Following this incident in the morning, Mr. Paulsen told the claimant that he needed to cool off and to go home for the rest of the day. The claimant asked him if he was being fired and Mr. Paulsen said no and that they would have a meeting about it the next day. Later that same afternoon, Mr. Paulsen, Mr. Sadler and Mr. Stastney discussed the incident and decided that the claimant should be terminated because of his actions that morning. Mr. Stastney called the claimant that afternoon and advised him that he was being terminated.

The employer has a progressive disciplinary policy. The type of discipline (verbal warning, written warning, suspension, or termination) is dependent upon the type of infraction. Employer's Exhibit 6 sets forth what types of infractions are Type A, Type B, and Type C.

The claimant had never been warned prior to the December 8, 2015 incident about insubordination or failing to follow a supervisor's instructions. Mr. Sadler testified that he had never given the claimant any written warnings before but had given him verbal warnings about his excessive cell phone use and absenteeism.

REASONING AND CONCLUSIONS OF LAW:

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

As a preliminary matter, I find that claimant did not quit, he was discharged from employment.

Iowa Code § 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 individual shall be disqualified for benefits 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).

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). 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).

Iowa Admin. Code r. 871-24.32(4) provides:

> (4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. *Sallis v. EAB*, 437 N.W.2d 895 (Iowa 1989). *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984), held that the absences must be both excessive and unexcused.

In this case, the claimant's action of arguing with Mr. Sadler in the workplace in response to Mr. Sadler's raised voice and use of profanity against him is not misconduct. This act does not constitute a material breach of his duties and obligations arising out of his contract of employment. The fact that the claimant was never warned for any previous actions of using profane language or insubordinate actions towards his supervisors shows that the claimant did not show an intentional and substantial disregard of the employer's interests or of his duties and obligations to his employer.

It is true that "[t]he use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). However, the claimant's negligent actions in response to Mr. Adler approaching him, yelling at him, and using profanity at him first, does not rise to the level of misconduct. The claimant was simply defending himself. This confrontation was simply an isolated instance of ordinary negligence. The employer has failed to meet its burden of proof of establishing disqualifying job misconduct.

DECISION:

The December 24, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

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Dawn Boucher
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Decision Dated and Mailed

db/css