

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK N RIEHM
Claimant

BUILDING PRODUCTS INC OF IOWA
Employer

APPEAL 21A-UI-05823-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On February 19, 2021, Mark Riehm (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated February 9, 2021 (reference 01) that denied benefits based on a finding claimant was discharged on November 18, 2020 for violation of a known company rule.

A telephone hearing was held on April 29, 2021. The parties were properly notified of the hearing. The claimant participated personally and was represented by Attorney Richard Bartolomei. Building Products Inc of Iowa (employer/respondent) participated by HR Manager Amanda Buhrow.

Claimant's exhibit A and employer's exhibit 1 were admitted. Official notice was taken of the administrative record.

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 worked for employer as a full-time driver. Claimant's first day of employment was August 15, 2018. The last day claimant worked on the job was November 18, 2020. Claimant was discharged on that date.

Claimant was discharged because he did not immediately report that he had been charged with Operating While Intoxicated (OWI) several months prior to his discharge. Claimant did not report the charge because he was not aware that employer required reporting an OWI charge. Employer's policies require immediate reporting of "moving violations, warnings or citations." Employer's policies do not specifically address whether an OWI charge must be immediately reported. Claimant did not receive a copy of these policies at the time of hire or anytime later.

Notably, claimant had previously failed to report a citation in a timely manner but was not disciplined in any way or advised that his failure to do so was a violation of employer's policies.

Claimant did report to Buhrow that his license was to be revoked several days prior to the revocation taking effect. Claimant did not report it earlier because he was unaware of any requirement to do so and because he believed the OWI charge would be dismissed prior to any revocation taking effect. The OWI charge was later dismissed and the revocation rescinded.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated February 9, 2021 (reference 01) that denied benefits based on a finding claimant was discharged on November 18, 2020 for violation of a known company rule 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.*

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).

Employer has not 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). While claimant may have been wise to make employer aware of the potential revocation of his license earlier than just a few days before the revocation was to take effect, his failure to do so was not a clear violation of employer's policies and he was not on notice of any such policy, anyway. Claimant's failure to notify employer earlier of the potential revocation was therefore at worst a good faith error in judgment or discretion and as such does not constitute disqualifying misconduct.

DECISION:

The decision dated February 9, 2021 (reference 01) that denied benefits based on a finding claimant was discharged on November 18, 2020 for violation of a known company rule is REVERSED. Claimant's separation from employment was not disqualifying. Benefits are therefore allowed, provided claimant is otherwise eligible.



Andrew B. Duffelmeyer
Administrative Law Judge

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May 10, 2021
Decision Dated and Mailed

abd/ol