

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MAX GONZALEZ

Claimant

APPEAL NO. 12A-UI-10282-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CITY COFFEE CO

Employer

OC: 07/29/12

Claimant: Respondent (2-R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the August 22, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on March 28, 2013. Claimant participated and was represented by Matt Reilly, Attorney at Law. Employer participated through Company President Tara Cronbaugh, Operations Manager Paul Cork, Operations Manager Angela Winnike, and Facilities Manager (Tara Cronbaugh's father) David Cronbaugh. Randy Walter was not called to testify. The employer was represented by Kirsten Frey, Attorney at Law. Employer's Exhibits 1 through 9 were received. Claimant's Exhibits A through G were received. The administrative law judge took judicial notice of the administrative record.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a controller and was separated from employment on July 14, 2012. His status as a member of management was vague. He and Cronbaugh dated since 2010 before their professional relationship commenced in March 2011. Their personal relationship ceased in January 2012. While on a trip to Philadelphia on Friday, July 13, Cronbaugh decided to discharge him. Claimant dropped off his business keys and credit card at the police station on July 14. She placed an ad to hire a controller on Craigslist the morning of July 15, 2012. (Claimant's Exhibit G, p. 3) There was no formal communication between the parties regarding the separation, either by quitting or discharge.

Claimant received the April 2011 version of the employee handbook on September 6, 2011. (Employer's Exhibit 2) Cork restated the employee discount policy (Employer's Exhibit 1, p. 26) in a manager meeting in claimant's presence and sent the overview memo to claimant, who approved it and posted it in the stores on July 11, 2012. (Employer's Exhibit 3) The memo specified the 25 percent manager discount applied only to prepared drinks: "Unless they are Tara... one of her immediate family or with her expressed [sic] permission) **NO ONE**, but Tara/her family **can get free food**. Hey, there has to be some perks to ownership, right ;-)" (Employer's Exhibit 3)

An employee who waited on claimant between noon and 12:30 p.m. on July 11 asked manager Molly Slager how to ring him up. She instructed the employee to give him 25 percent off his prepared drink "because only Tara and her family could receive the manager purchase discount" on the entire meal. Shortly thereafter claimant approached Slager in a "very rude and angry" manner and told Slager he was entitled to the discount on his entire meal. Slager described his communication as a "rant" and reminded him about the manager's meeting about discounts. She eventually gave him his desired discount to calm him down and reported the incident to Cork. (Employer's Exhibit 4) Cork notified Cronbaugh about Slager's report in an e-mail on July 11 and asked her how it should be handled. (Employer's Exhibit 5)

In response, on July 12 Cronbaugh texted claimant and instructed him to set up a staff charge at one of the stores, have his purchases rung up with a company discount and not to take it out of his payroll unless he was buying for someone other than himself. The rationale was to avoid "drama" and "gossip" amongst employees. (Claimant's Exhibit D, pp. 36 - 38) The claimant's text exhibits are difficult and time-consuming to follow because they are broken up into different exhibits with repetition, undated and cut off portions of text conversations not chronologically arranged. Some have rambling multi-page preambles in all capital letters. The ALJ's impression of the series of texts beginning July 12 and continuing through July 15 was that they were self-serving statements to Cronbaugh in an attempt to shift blame to her or others and goad her into an angry retort. (His texts to Cronbaugh are represented on the right side of the text pages.) (Claimant's Exhibit D) Cronbaugh told him multiple times to stop the comments ranging from playing-the-martyr to tirades. (Claimant's Exhibits D, pp. 7, 10, 17, 19, 20, 21, 23, 29, 30, 31, 35, 36; and E, pp. 4, 5, 6, 13) He continued into July 15, even beyond turning in his keys and credit card on July 14.

Cronbaugh texted claimant a month earlier on June 13, 2012, "Enough said. I am not Putin up with your mouth anymore." [sic] and "This would be your second. Warning. Be nice!" [sic] (Claimant's Exhibit C, p. 34) Cronbaugh had also warned claimant via text and verbally about his confrontation with Winnike in May 2012. After a label-making/ordering responsibility confusion, claimant yelled and swore at Winnike for about ten minutes, calling her "stupid" and "fucking dumb" in front of a subordinate employee Libby Logsdon. (Employer's Exhibit 6) This was not an isolated incident. Winnike and Logsdon told Cronbaugh they did not feel comfortable working with claimant.

Texts and other dated material after the separation date were not considered. David Cronbaugh's communication, the financial statements, and claimant's credit card use are not relevant to the separation. David Cronbaugh had no authority to make separation-related decisions. Cronbaugh told claimant she would handle financial matters when she returned if he did not feel comfortable doing so. (Claimant's Exhibit E, p. 4, 5, 6) Furthermore, claimant was a recipient of the bank's e-mails in May 2012 but did not express his indignation about the issue with Cronbaugh until July 13, 2012. (Claimant's Exhibit E, pp. 7, 8) Cronbaugh acquiesced to claimant's personal use of the business credit card beyond the end of the personal relationship in January 2012.

Claimant received unemployment benefits after the separation on a claim with an effective date of July 29, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct.

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.

871 IAC 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

"Drama" is the only factual point upon which both parties and the ALJ agree. As to the parties' credibility, the claimant "doth protest too much, methinks." (Shakespeare, *Hamlet*, Act III, Scene II) The employer provided independent information from multiple employees about the claimant losing his temper. Claimant's own exhibits bear that out in his on-going text rants. While Cronbaugh was not circumspect in her own communication with claimant, her outbursts were mainly in an attempt to corral claimant's behavior. Thus, the employer's evidence carries more weight.

Distilled to its bare essence from a sea of irrelevancy and redundancy, this is the story of a soured personal relationship and claimant's expression of verbal anger at Slager, and later Cronbaugh, because of feeling devalued after being asked, by employees he considered subordinate, to abide by the manager discount, rather than the owner/family discount. After being told how to handle it, not accepting the direction and pressing the issue to the point of obstinate harassment (via text) towards Cronbaugh, she decided to discharge him. Since claimant was repeatedly antagonistic towards Cronbaugh and at least two of her employees, for which he had been warned, his behavior rises to the level of disqualifying misconduct. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, claimant has received benefits but was not eligible for those benefits.

DECISION:

The August 22, 2012 (reference 01) decision is reversed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

REMAND: The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css