

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MATTHEW L OLSSON
Claimant

T CORP
Employer

APPEAL NO. 17A-UI-06560-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/04/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 26, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 17, 2017. Claimant participated. Employer participated by Rebecca Mills and Chris Martin.

ISSUES:

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 May 26, 2017. Claimant was released from his position on June 1, 2017 after not showing up for morning meetings over a few days.

Claimant was hired to work full time for employer in November, 2016. Claimant never did work full time hours – partially because claimant would leave work at 4:00 pm after arriving at 9:00 am but mostly because employer did not have sufficient maintenance work to keep claimant busy.

All parties agreed that claimant complained to employer about not getting enough hours for work. Claimant stated that he reached an agreement with employer that he would not come into work such that he could pursue other job options. Claimant had been working on-call during his employment, handling after-hours calls from residents, and he wanted to continue doing this. Claimant also wanted to be allowed to have employer call claimant when there was a particularized need for him to be at work.

Claimant did not show for the early meeting on June 26, 2017. Claimant still was working for employer when he received an after-hours call from a resident.

Employer stated that claimant never was allowed to continue being on the payroll while not showing up for work, except when needed. Claimant did not show up for early meetings, or for

work at all on May 30, 31, or June 1, 2017. Claimant came in later on June 1, 2017 and was terminated from his employment at that time. Employer had asked claimant if he was still employed, and claimant responded that he thought he was as he still had the company card, keys, and van. Employer stated that they should part ways.

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*.

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*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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).

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. Excessive absences are not misconduct unless unexcused. Three incidents of tardiness or absenteeism after a warning has been held misconduct. *Clark v. Iowa Department of Job Service*, 317 N.W.2d 517 (Iowa Ct. App. 1982). While three is a reasonable interpretation of excessive based on current case law and Webster's Dictionary, the interpretation is best derived from the facts presented.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning attendance at early morning meetings. Claimant was not warned concerning this policy. Claimant showed that, at least as of May 26, 2016, claimant was still working for employer and intending to work there. Claimant hadn't shown for the morning meetings on those mornings, but had still answered the after-hours call in from a resident. Claimant communicated this with employer so employer knew at that time that claimant was still working for employer.

Claimant and employer differ in their testimonies as to whether claimant had approval from employer to work other employment while maintaining on-call status with employer. Claimant states that he was cleared to do this by a manager while employer said the discussion didn't occur. Whether or not the discussion occurred, employer knew at or around the time that claimant took the after-hours call on May 26, 2017 that claimant was still working for employer as claimant reported the after-hours call and action to employer on or before May 30, 2017. It is reasonable for claimant to believe that his continued lack of attendance at morning meetings was okayed by employer as he'd never received an alert or warning from employer that his actions were inappropriate. As claimant was in contact with employer, employer easily could have told claimant that he did need to show for meetings and not just work on-call.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant hadn't received a warning prior to his being terminated for missing morning meetings. As claimant had been working few hours when he'd been hired to work full time, it was reasonable for claimant to try to work with employer to create a situation where claimant could both continue earning money for work done for employer while at the same time attempting to

get outside work to fill in the hours promised but not delivered by employer. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated June 26, 2017, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn