

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IBRAHIM SOULEMANE
Claimant

ALLSTEEL INC
Employer

APPEAL 19A-UI-09525-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/22/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 25, 2019 (reference 01) unemployment insurance decision that denied benefits to the claimant based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on January 3, 2020. The claimant, Ibrahim Soulemene, participated personally. The employer, Allsteel Inc., was represented by Amanda Lange and participated through witness Kerin McDonald. Employer's Exhibits 1 through 4 were admitted.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a technical machine operator. He began working for the employer on October 6, 2014 and his employment ended on November 6, 2019. Ryan Oliver was claimant's immediate supervisor.

This employer operates a manufacturing plant. Claimant worked on the production line. The employer has a written policy that states a member must treat others with dignity and respect as a condition of continued employment. See Exhibit 1. The written policy further states that members will not engage in behaviors (verbal/nonverbal) that constitute harassment or discrimination, or behaviors that are intended to belittle, demean, intimidate, torment, isolate or otherwise mistreat another member. See Exhibit 1. Claimant was trained on these policies in February of 2019. See Exhibit 1.

On July 26 and July 29, 2019, claimant made comments to his group leader and another member stating that he would inflict physical harm to another individual. See Exhibit 4. He received a written warning as discipline for his actions. See Exhibit 4. The warning stated that further insinuations or threats of violence against fellow members will not be tolerated. See Exhibit 4. Claimant noted in the written warning that he will change his behaviors. See Exhibit 4.

The final incident leading to discharge occurred on October 31, 2019. During his shift, claimant told another co-worker that “you aren’t the problem over here but if you were, I’d slap you across the face.” See Exhibit 2. Another co-worker overheard the claimant state that if Alyssa was the problem then he would slap her in the face. See Exhibit 3. Claimant was discharged for violation of the employer’s written policies against harassment of co-workers.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

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).

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

(4) Report required. The claimant's statement and 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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). 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 of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

The employer has a right to expect civility among its employees. An employer does not have to tolerate violence in the workplace because it diminishes the overall expectation of safety, well-being and respect among employees in the work environment. Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp't Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995).

In this case, claimant intentionally told another co-worker that if she was the problem he would slap her across the face. This was in violation of the employer's known and reasonable written policy. It is clear that claimant's actions were intentional and they were a substantial violation of the employer's written policy, especially in light of the fact that the claimant had received discipline for this same type of conduct three months prior to the final incident leading to discharge.

Accordingly, the employer has met its burden of proof in establishing that the claimant's conduct consisted of deliberate acts that constituted an intentional and substantial disregard of the employer's interests. These actions rise to the level of willful misconduct. As such, benefits are denied.

DECISION:

The November 25, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his separation date, and provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn