

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN L JONES
Claimant

KINZE MFG INC
Employer

APPEAL 19A-UI-02978-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/17/19
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On April 9, 2019, Justin L. Jones (claimant) filed an appeal from the April 3, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination Kinze Mfg, Inc. (employer) discharged him for violation of a known company policy. The parties were properly notified about the hearing. A telephone hearing was held on April 29, 2019. The claimant participated personally and was represented by Attorney Nathaniel Staudt. The employer participated through Human Resources Director Mike Medhurst. Katie Uchida was sworn in as an employer witness but did not provide any testimony. No exhibits were offered into the record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Welder beginning on March 5, 2018, and was separated from employment on March 15, 2019, when he was discharged. The employer has core values which all employees are required to read and sign before they can be hired. These values include, among other things, mutual respect towards individuals in the work environment.

The claimant reported work-related arm pain to the employer on March 12. He had previously reported the issue but was not sent for medical care. The employer expressed some disbelief that the issue was work-related, but made an appointment with its Worker's Compensation provider.

On March 14, the claimant went to the doctor's appointment. The doctor told the claimant he did not believe the injury was related to his work with the employer and he was going to release him back to work. The claimant began speaking loudly and used profanity towards the doctor.

At one point, a nurse opened the door and told the doctor they needed to make a phone call to remove him from the room. After the doctor returned, he released the claimant with restrictions and stated he would be referred to a specialist for further evaluation. The provider then contacted the employer and stated the claimant was no longer allowed back in its facility due to his conduct. The provider followed up with an email stating that the claimant had yelled profanity so loudly at the doctor while in the exam room that other patients and staff could hear what he was saying.

The claimant was discharged the following day for violating the employer's core values specifically that of mutual respect. Human Resources Director Mike Medhurst asked the claimant about the incident and the claimant denied it occurred. However, Medhurst believed the clinic over the claimant as they regularly sent employees to that provider without incident. The employer determined the claimant had created a hostile environment at the clinic.

REASONING AND CONCLUSIONS OF LAW:

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

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).

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 must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). "The 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).

Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work-connected." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). The court has concluded that some off-duty conduct can have the requisite element of work connection. *Kleidosty v. Emp't Appeal Bd.*, 482 N.W.2d 416, 418 (Iowa 1992). Under similar definitions of misconduct, for an employer to show that the employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence that the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest, and (3) was conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer. See also, *Dray v. Director*, 930 S.W.2d 390 (Ark. Ct. App. 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988), quoting *Nelson v. Dept of Emp't Security*, 655 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§ 77-78.

The employer has established that the claimant engaged in job-related or work-connected misconduct. The employer sent the claimant to its Workers' Compensation medical provider during normal work hours which provides the necessary nexus to his employment. The claimant acknowledged that he spoke loudly and used profanity toward staff at the clinic while at the appointment. The employer credibly testified the claimant's conduct resulted in him being banned from the clinic. The claimant's conduct violated a code of behavior established between him and the employer and it was a deliberate disregard of the reasonable standards of conduct an employer can expect from an employee. The claimant's conduct is disqualifying even without prior warning. Benefits are denied.

As benefits are denied, the issue of whether the claimant is able to and available for work is moot.

DECISION:

The April 3, 2019, reference 01, unemployment insurance decision is affirmed. The 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. The issue of whether the claimant is able to and available for work is moot.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn