

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THEODORE M MEGGERS

Claimant

APPEAL 17A-UI-02395-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 01/29/17

Claimant: Appellant (1)

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

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the February 23, 2017 (reference 01) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on March 27, 2017. The claimant, Theodore M. Meggers, participated personally. The employer, Casey's Marketing Company, participated through witness Todd Garrett. Employer's Exhibits 1 – 8 were admitted.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a store manager. Claimant was responsible for supervising staff, scheduling and general operation of a convenience store. Mr. Garrett was claimant's immediate supervisor. Claimant worked Monday through Friday each week with occasional weekend hours.

In January of 2017, a co-worker reported to Mr. Garrett that claimant was not at the store for his working hours. Mr. Garrett investigated and reviewed videotape footage. He observed the claimant leaving the store for substantial periods of time. See Exhibit 4. Mr. Garrett emailed claimant asking him to explain why he was absent from the store for these periods of time while he remained clocked in at work. Claimant did not have explanations for his whereabouts at the times that Mr. Garrett asked where he went or what he was doing except that maybe he went to the bank or post office.

Claimant had been informed in May of 2016 that all employees minutes/hours worked must be accurately recorded. See Exhibit 5. The written policy further stated that all employees, including the store manager, are required to clock in before they perform any work and to clock

out after they have completed all their work. See Exhibit 5. The employer has another written policy that states that any employee who misrepresents, falsifies or deliberately omits any fact, whether verbal or written, will be subject to corrective action, up to and including termination of employment. See Exhibit 8. Examples include, but are not limited to, accurately recording work hours, information disclosed on the employment application or other forms, expense reimbursements or other forms. See Exhibit 8.

Claimant admitted that on one occasion he went to the doctor for personal business while being clocked in as working. Claimant never notified Mr. Garrett that he was going to be absent from the store for business reasons on the dates and times listed that claimant was absent from the store. See Exhibit 4. Claimant was required to notify Mr. Garrett that he was leaving the store for business purposes. If claimant was leaving the store for personal reasons he was required to complete a leave request and have Mr. Garrett approve his leave request before being absent from the store for his scheduled working hours. Claimant had received a written warning prior to his discharge for taking leave from work prior to his leave request being granted.

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.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the Administrative Law Judge finds that Mr. Garrett's testimony is more credible than claimant's testimony.

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). A lapse of 11 days from final act until discharge when claimant was notified on fourth day that his conduct was grounds for dismissal did not make final act a “past act”. *Greene v. Emp’t Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

This is not simply one occasion of claimant failing to report a personal leave from work. Prior to his discharge claimant had received a previous warning for taking leave when it had not been previously approved. Claimant’s job duties included being at work to supervise employees and manage the store. Claimant knew that he needed to receive permission to leave work for personal reasons and that he needed to report to Mr. Garrett any time he left the store for business reasons, except making deposits or going to the post office. Claimant left the store without approval for personal reasons while he was clocked in as working. This is falsification of work hours in violation of the employer’s written policy. Claimant also failed to notify Mr. Garrett when he was leaving the store for reasons other than banking and going to the post office.

There is substantial evidence in the record to support the conclusion that claimant deliberately violated the employer’s written policy. Accordingly, the employer has met its burden of proof in establishing that the claimant’s conduct consisted of deliberate acts which 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 February 23, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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