

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES D GORDON
Claimant

KEMIN INDUSTRIES INC
Employer

APPEAL 19A-UI-02337-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/17/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

James D. Gordon (claimant) filed an appeal from the March 7, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination Kemin Industries, Inc. (employer) discharged him for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing began on April 3, 2019 and concluded April 5, 2019. The hearing was broken into two parts as the claimant's phone began to fail during his testimony on the first day. The parties agreed to the rescheduled date to conclude the hearing.

The claimant participated personally on the first day of the hearing and submitted a written statement in lieu of participation for the second day of the hearing which was admitted into the record as the Claimant's Exhibit A. The employer participated through Amanda Formaro, Vice President of Human Resources, and Bob Johnson, Product Application Department Manager, and was represented by Attorney Kathryn Greenfield. The Employer's Exhibit 1 and the Department's Exhibit D1 were admitted into the record.

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: The claimant was employed full-time as a Product Application Engineer beginning on September 4, 2018, and was separated from employment on February 7, 2019, when he was discharged. The employer has policies that prohibit misusing company property and engaging in any conduct that could be an indictable criminal offense.

On February 7, 2019, the claimant requested to use the locked bathroom in another part of the facility as other bathrooms were occupied. The next person to use the bathroom after the claimant found drug paraphernalia in the bathroom. She reported it to Bob Johnson, Product Application Department Manager, who in turn reported it to Amanda Formaro, Vice President of Human Resources.

Formaro went to the claimant's location and conducted an investigation. She took statements from people working the area and determined the claimant was the only one who could have left the drug paraphernalia in the bathroom. She met with the claimant and asked him about the found object. He denied it was his and provided a written statement. Formaro sent the claimant home in a taxi and advised him to look into the employee assistance program (EAP).

Approximately four hours later, the claimant contacted Formaro to get more information about the EAP. He then asked her what would happen if he was the owner of the found object. She asked him if he was the owner and he acknowledged it was his. He also disclosed that he was self-medicating due to mental health impairments. Formaro thanked the claimant for his honesty and informed him that he was discharged due to violation of the employer's policies.

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). 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).

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The employer has presented substantial and credible evidence that the claimant brought drug paraphernalia to work. The employer has a reasonable expectation that its employees will not engage in illegal activities or bring illegal contraband at work. The claimant's conduct violated the employer's interests and reasonable expectations of its employees. This is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The March 7, 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn