

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JEREMY G POOLAW
Claimant

APPEAL NO. 17A-UI-00293-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMGAD F ZAGHLOUL
Employer

OC: 12/11/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Amgad Zaghoul (employer) appealed a representative's December 29, 2016, decision (reference 01) that concluded Jeremy Poolaw (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 31, 2017. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Amgad Zaghoul. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 12, 2015, as a full-time kitchen team member. The claimant signed for receipt of the employer's handbook on July 8, 2015. The handbook states that a person may be terminated for using foul language or for a lack of respect. On July 23, 2016, the employer issued the claimant a written warning for failure to follow instructions. The employer notified the claimant that further infractions within thirty days could result in termination from employment.

On December 5, 2016, the claimant was supposed to work from 5:45 a.m. to 3:00 p.m. At 4:00 a.m. the claimant sent his supervisor a text indicating he would not be able to work that day because he was ill. On December 6, 2016, the employer issued the claimant a verbal warning for not properly reporting his absence by speaking to a supervisor and finding a replacement. The employer notified the claimant that further infractions could result in a written warning. The claimant raised his voice and said, "This is B.S." "This is stupid." and "I don't agree with it". The claimant walked away from the conversation. The employer had never heard the claimant raise his voice before. He did not raise his voice loud enough for anyone else to hear him. On December 8, 2016, the employer terminated the claimant for being disrespectful.

The claimant filed for unemployment insurance benefits with an effective date of December 11, 2016. The employer participated personally at the fact-finding interview on December 28, 2016, by Amgad Zaghloul.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The claimant's conduct on December 6, 2016, was unsatisfactory. It showed a good faith error in judgment. This conduct does not rise to the level of misconduct. The employer did not provide sufficient evidence of job-related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's December 29, 2016, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rs