

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

RYAN J HAHN
Claimant

RAYMOND-MUSCATINE INC
Employer

APPEAL 22A-UI-11991-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/05/21
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Ryan J Hahn, filed an appeal from the May 4, 2022, (reference 03) unemployment insurance decision that denied benefits based upon the conclusion he was discharged for violating a known company rule. The parties were properly notified of the hearing. A telephone hearing was scheduled to be held on July 18, 2022. The claimant participated and testified. The claimant was represented by Kelsey A. W. Marquard, attorney at law. The employer participated through Human Resources Manager Beth Downing and Engineering Manager Jerry Goeke. No exhibits 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 worked as a full-time technician two from April 1, 2019, until his employment ended on September 9, 2021, when he was terminated. The claimant's supervisor was Engineering Manager Dave King. The claimant's core work hours were from 6:00 a.m. to 2:30 p.m. Monday through Friday. Sometimes the claimant would come in early for work. Engineering Manager Dave King was the claimant's immediate supervisor. The claimant performs part of his role performing tests outside of the plant.

The employer has an employee manual. The employee manual states employees get one 15-minute break and thirty-minute lunch each day. Employees are to clock out for the lunch. The claimant received a copy of the company handbook shortly after his hire. The employee handbook labels insubordination as a primary offense. It also states employees are to check out laptops prior to taking them. All employees have access to the employee handbook digitally.

On June 29, 2021, the claimant filed a complaint with the Iowa Civil Rights Commission alleging Mr. King had assaulted him by poking him sexually with a tape measure. The complaint stated

Mr. King exclaimed, "You know when guys get older and they tend to like boys and their sexual desires start to change." The complaint alleged Ms. Downing viewed the incident and permitted it.

On August 9, 2021, the claimant left the building at 11:56 a.m. and re-entered at 12:45 p.m. He was overpaid 11 minutes that day because the claimant was punched out for this time.

On August 11, 2021, the claimant left the building at 11:46 a.m. The claimant re-entered the building at 12:45 p.m. The claimant was overpaid 11 minutes that day because the claimant was punched out for this time.

On August 13, 2021, the claimant walked to his vehicle and returned from 8:04 a.m. to 8:09 a.m. He did this same thing again from 9:09 a.m. to 9:16 a.m. The claimant then walked to his vehicle at 11:26 a.m. and drove away and returned at 11:35 a.m. The claimant went back out to the lot at 11:49 a.m. and did not return until 12:29 p.m. The claimant was on the clock for this entire period.

On August 15, 2021, Ms. Downing started tracking the claimant's whereabouts on its premises by watching security camera recordings. Ms. Downing testified that this is not a practice that the employer takes uniformly regarding all of its employees. This was prompted by a tip from Mr. King. Mr. King gave Ms. Downing a general idea of where the claimant would be moving through the plant on any given day.

On August 16, 2021, the claimant informed Engineering Manager Jerry Goeke that he was leaving early that day for a family emergency, but he would make up the time. The claimant was out of the office for 61 minutes that day. The claimant did not subsequently make up the time as promised.

On August 18, 2021, the claimant left the building at 8:50 a.m. The claimant did not clock out prior to leaving. He did not return until 9:30 a.m.

On August 19, 2021, the claimant received an email about a computer on his desk. The claimant was uploading software on to it as part of his duties. Mr. King informed the claimant that he needed to check the computer out before using it. The claimant reminded the claimant that Mr. King had given him permission to use it. The claimant added that Mr. King appeared to forget things constantly.

On August 31, 2021, the claimant arrived to work on schedule. The claimant left at 9:38 a.m. and did not re-enter the facility until 10:35 a.m. without clocking out. On that day, Mr. Goeke discovered the claimant in his truck sleeping. Mr. Goeke warned the claimant that people were watching video recordings of him on the premises, so the claimant should act accordingly.

On September 7, 2021, the employer concluded its internal investigation of the claimant's internal harassment complaint against Mr. King.

On September 9, 2021, Ms. Downing terminated the claimant for two reasons after consulting with the employer's legal counsel. First, the employer reasoned the claimant engaged in insubordination on August 19, 2021 in the email exchange with Mr. King regarding the laptop. The employer also reasoned that the claimant had engaged in timecard theft. In its submission to the Iowa Civil Rights Commission ("ICRC"), the employer reasoned the claimant was terminated for "theft of company time and he lied about the circumstances about his complaint." Ms. Downing did not deny this was the employer's stance regarding the ICRC complaint.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer has not met its burden to show the claimant was discharged for disqualifying conduct. Benefits are granted.

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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).

Iowa Admin. Code r.871-24.32(4) and (8) provide:

(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.

(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 his own common sense and experience, the administrative law judge finds claimant's testimony more credible generally. The administrative law judge does find the employer's testimony regarding specific timecard information on particular days more persuasive than the claimant's testimony on that point.

The administrative law judge finds the employer has not met its burden. The employer presented a mixed motive reason for the termination decision, which it characterizes as insubordination and timecard theft. The record establishes the claimant had some timecard issues regarding attendance, but it does not reflect these violations were taken with the intent to deprive the employer those wages. Instead, the employer has merely shown attendance incidents occurring.

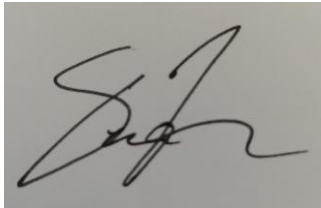
Similarly, the employer has not shown the claimant was insubordinate on August 19, 2021. The claimant testified he had been authorized to have the laptop by Mr. King himself. Ms. Downing did not provide credible evidence contradicting this narrative. Indeed, Mr. King was not made available to testify. Given these circumstances, the employer cannot show the claimant's actions constituted insubordination. At most, the claimant demonstrated a poor attitude when he reminded Mr. King that he had previously authorized him use. No profanity was used. Indeed, the employer did not provide any language suggesting the claimant said anything beyond the claimant's description of the incident.

The administrative law judge also notes the claimant has credibly testified and the employer's witnesses have corroborated a scheme to subject him to additional scrutiny in response to an ICRC sexual harassment complaint. Indeed, Ms. Downing did not deny that the claimant's alleged lying in his complaint to the ICRC was a reason given for his termination.

Taken together, the employer cannot meet its burden to clearly articulate a credible reason for discharge that was caused by work-related misconduct per rule Iowa Admin. Code r.871-24.32(4). Benefits are granted.

DECISION:

The May 4, 2022, (reference 03) unemployment insurance decision is REVERSED. The employer has not met its burden to show the claimant was discharged due to disqualifying conduct. Benefits are granted provided the claimant is otherwise eligible.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge

__September 26, 2022__
Decision Dated and Mailed

smn/ar

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.