

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER G FRIEDSON
Claimant

APPEAL NO: 18A-UI-05166-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JORDISON CONSTRUCTION INC
Employer

OC: 12/31/17
Claimant: Appellant (2R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 1, 2018, (reference 09) unemployment insurance decision that denied benefits. The claimant was properly notified about the hearing. A telephone hearing was held on May 22, 2018. The claimant participated personally. The employer participated through Michelle Sommer, HR Director. Bill Bliss was registered to participate but did not attend the hearing. No request for postponement was made by either party for the hearing.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 laborer and was separated from employment on March 28, 2018 by Bill Bliss. The reason for discharge is disputed.

The claimant indicated on March 28, 2018, he was sent home from his job site on his final day of employment after arriving late due to a doctor's appointment (which he later discovered was the day prior and he missed the appointment). The claimant acknowledged he returned to the job site upset but attempted to perform work until he was told by Robert, a lead worker, to go home. Prior to being told to go home, the claimant's co-worker had said to him "Get the fuck away from me. Don't fucking talk to me." The claimant denied engaging or cursing back. The claimant's foreman then called him the same day and said he was not wanted on the crew anymore but that he would be put on a new crew, and that it would take a few days. Instead of

being moved to a new crew, he was informed that the owner just wanted to discharge the claimant instead.

The employer reported the claimant was discharged after being sent home from work due to being intoxicated. No policy or rule was provided that the claimant broke. No warnings were provided by the employer to the claimant. No other details were provided.

Since separation from this employer, the claimant performed work for one week at Perfect Cut Lawn, from approximately April 22-28, 2018 before separating. That separation has not yet been adjudicated or determined at the claims level.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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).

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.* Assessing the credibility of the claimant and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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). The employer and claimant accounts of the separation are inconsistent: The claimant stated he was removed from his crew on March 28, 2018, and told he would be put on a new crew but then discharged unexpectedly. The employer alleged the claimant was discharged in connection with arriving to a job site intoxicated. The employer witness could not recall any detail or explanation of the final incident which triggered discharge. No details of any alleged prior incident or prior warning were provided. No manager or witness to the claimant’s discharge attended the hearing, and no request for continuance was made to allow for their participation. No proof of any incident involving consumption of alcohol by the claimant was presented by the employer. No video footage or surveillance was furnished by the employer which would corroborate its reason for discharge. The employer presented no evidence to refute the claimant’s credible account that he was first told he would be moved to another crew and then discharged without explanation.

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.

In this case, the employer has failed to provide any details related to a final incident which led to the claimant discharge. Accordingly, the employer has not established by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND: The claimant's (April 2018) separation from Perfect Cut Lawn as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The May 1, 2018, (reference 09) decision is reversed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. **REMAND:** The claimant's April 2018 separation from Perfect Cut Lawn as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn