IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CHRISTOPHER CARSON Claimant **FAWN MANUFACTURING INC** Employer	**APPEAL 20A-UI-09891-HP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/29/20** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Christopher Carson filed an appeal from an August 17, 2020 (reference 01) unemployment insurance decision that denied benefits based upon his discharge from employment from Fawn Manufacturing Inc. ("Fawn Manufacturing") on March 27, 2020. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for September 28, 2020. Carson appeared and testified. Lane Henry appeared and testified on behalf of Fawn Manufacturing. Exhibits 1 and 2 were admitted into the record. I took administrative notice of the claimant's unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

On December 14, 2017, Carson commenced full-time employment with Fawn Manufacturing. Carson held several positions with Fawn Manufacturing. Fawn Manufacturing promoted Carson to die setter approximately six months before his employment ended. Prior to that, he was an inspector. Kierre Balack was Carson's immediate supervisor.

Carson testified on March 27, 2020, he became ill at work. After lunch, Carson did not believe he could work because he was physically sick. Carson was uncertain if he might have Covid-19. Carson testified he could not find Balack because Balack was not back from lunch, so he told his coworker, Bill Smith, he was leaving because he was ill and he asked Smith to let Balack know he was going home because he was sick.

Carson was scheduled to be off on March 28, 2020. On March 29, 2020, he returned to work. Balack asked Carson to come to the office. The union steward, Andy Dominguez, was also present. Balack told Carson he would likely be terminated because he left work on March 27, 2020 and that Fawn Manufacturing would get ahold of him in the next few days with the final

decision. Balack had Carson collect this personal belonging and he walked Carson out of the building.

Carson testified he received a call from Fawn Manufacturing on April 2, 2020, stating he had been terminated. Carson reported he was not in danger of termination under the attendance policy on March 27, 2020.

Henry testified Fawn Manufacturing considered Carson quit because he left work on March 27, 2020 without telling anyone he was absent. Anthony Tungland, the director of plant operations, prepared a statement stating it was Fawn Manufacturing's position that Carson walked off the job. (Ex. 1) Henry did not have any documentation regarding Carson's alleged conversation with Balack and Dominguez on March 29, 2020. She stated that no one from Fawn Manufacturing called Carson on April 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides an individual "shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . . .If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The Iowa Supreme Court has held a "'voluntary quit' means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires "an intention to terminate the employment relationship accompanied by an overt act carrying out the intent." *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

871 Iowa Administrative Code 24.25, provides: "[i]n general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. . . ." Carson testified he left work on March 27, 2020, because he was physically sick and he thought he might have Covid-19. Carson reported he could not find his supervisor because he was at lunch and he told his coworker, Smith, to tell Balack, their supervisor, that he was going home sick. Carson returned to work on March 29, 2020. Balack called Carson to the office and stated he would likely be fired for leaving work on March 27, 2020. Carson collected his personal belonging and Balack walked him out of the building. Carson was not in danger of being terminated under the attendance policy at the time Balack walked him out of the building. I do not find Carson voluntarily quit his position.

Under Iowa Code section 96.5(2)*a*,

> 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.

871 Iowa Administrative Code 24.31(1)*a*, defines the term "misconduct" 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 Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

> *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.

871 Iowa Administrative Code 24.32(8) provides:

> *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.

The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982) The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984)

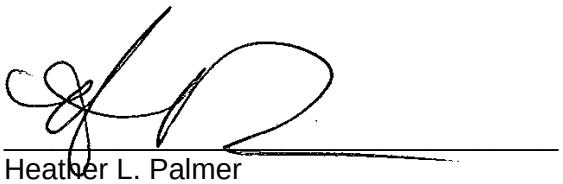
Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits; such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806, 808 (Iowa Ct. App. 1984) The definition of misconduct in the administrative rule focuses 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.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986) Additionally, poor work performance is not misconduct in the absence of intent. *Miller*

v. Emp't Appeal Bd., 423 N.W.2d 211, 213 (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. Emp't Appeal Bd.*, 616 N.W.2d 661, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988) Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986)

Carson testified he left work on March 27, 2020 at 3:30 a.m. because he was physically sick. Carson relayed he could not locate Balack and he asked his coworker, Smith, to let Balack know he was going home sick. When Carson returned to work on March 29, 2020, Balack called him into the office and told him he would likely be terminated for leaving on March 27, 2020. Carson reported Fawn Manufacturing told him he had been terminated on April 2, 2020. I find Carson showed poor judgment by failing to wait for Balack to return from lunch before leaving, but I do not find he acted deliberately or with recurrent negligence in violation of a company policy, procedure, or prior warning. Fawn Manufacturing has failed to establish any intentional and substantial disregard of its interest that rises to the level of willful misconduct. As such, benefits are allowed, provided Carson is otherwise eligible.

DECISION:

The August 17, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed. The employee did not quit his position and the employer has not established the claimant was discharged for misconduct for a disqualifying reason. Benefits are allowed provided the claimant is otherwise eligible.



Heather L. Palmer
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September 29, 2020
Decision Dated and Mailed

hlp/scn