

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON R SPENCE

Claimant

APPEAL 21A-UI-12375-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

OC: 03/15/20

Claimant: Appellant (2)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On May 14, 2021, the claimant/appellant filed an appeal from the April 14, 2021, (reference 07) unemployment insurance decision that disallowed benefits based on claimant being discharged for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on July 26, 2021. Claimant participated at the hearing. Employer participated through Assistant General Manager, Teresa Sloss.

ISSUES:

Was claimant's appeal timely?

Was the separation a discharge for job-related misconduct that disqualifies claimant from receiving unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on April 14, 2021. The appellant did not receive the decision and did not become aware of the decision until he received a notice from Iowa Workforce Development asking him to provide proof of identification. When claimant called in to provide proof of his identification he became aware of the April 14, 2021, decision and immediately appealed it on the same day.

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on November 19, 2020. Claimant last worked as a full-time shift team lead. Claimant was separated from employment on January 15, 2021, when he was discharged by the employer.

Over the course of claimant's employment he put in additional time and received a pay raise. On January 4, 2021, claimant became upset because he was not receiving the appropriate compensation for the time he worked and his pay raise. Claimant made a comment about

breaking necks. Claimant testified he said he is working so much he is breaking his neck. Ms. Sloss heard the claimant say "I feel like I'm ready to break your guys' necks." She interpreted this as a general comment and not directed at a particular employee. Claimant did not make any gestures or physically touch anyone prior to, during, or after the comment. The employer received a complaint from a co-worker that felt threatened by claimant's statement.

Claimant continued working until January 7, 2021, and then was taken off the schedule. Claimant was then contacted by the store manager on January 15, 2021, to come to the store. Claimant went to the store and received a written notice he was being terminated for threatening an employee. Ms. Sloss could not testify which policy the claimant violated. Claimant had not receive a prior verbal or written warning.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant discharge was for job-related misconduct. The administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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). 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).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

The parties dispute what claimant actually said on January 4, 2021. It is unclear whether claimant was using a figure of speech to describe how hard he was working or whether he was making a threat. Regardless of which statement occurred both parties agree it was a general statement that was not directed towards a particular person. Both parties agree that he did not make a threatening gesture or physically touch anyone in a threatening manner. Although claimant made a poor choice in his words, claimant's words do not rise to the level to qualify as job-related misconduct. Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed. Benefits are allowed.

DECISION:

The claimant's appeal is timely.

The April 14, 2021, (reference 07) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive, flowing style. Below the signature, there is a small, faint, illegible mark.

Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

August 2, 2021
Decision Dated and Mailed

cs/mh