

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAUL D MCCARTNEY
Claimant

HORMEL FOODS CORPORATION
Employer

APPEAL 16A-UI-13180-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/13/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 30, 2016 (reference 01) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on January 3, 2017. The claimant, Paul D. McCartney, participated personally and through witness Charles Gibbons. The employer, Hormel Foods Corporation, participated through hearing representative Todd Richardson and witnesses Erin Montgomery, Jake Wallerius, and Joe Keegel. Employer's Exhibit 1 was admitted.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as strip out operator. Claimant was employed from December 3, 2015 until November 10, 2016 when he was discharged from employment. Claimant's job duties included operating machinery in the factory. Mr. Wallerius was his immediate supervisor. Claimant worked 2nd shift hours.

During his shift beginning November 2, 2016 and ending November 3, 2016 claimant was assigned to the tote line. He had been assigned to this line on previous occasions. His job entailed running the meat product thru a metal detector to ensure that there was no metal in the meat. The metal detector flashed red if there was metal detected and green if there was no metal detected. His job duties required him to stop any meat product where metal was detected and re-run it through a second time. If it still detected metal in the meat on the second try, claimant was to discard the meat product into a specified area.

While he was running the metal detector the machine kept signaling a red flash as if most of the meat had metal in it. Claimant determined that the machine was not working properly and contacted maintenance. Claimant did not contact his immediate supervisor. Knowing that the machine was not properly running, claimant continued to run meat product through the metal

detector. In order to allow the meat to pass by the detector claimant continuously held down the “go” button on the machine to manually bypass the machine’s automated stop process. This allowed meat which triggered a red flash to be passed through the machine without a second re-run.

Mr. Keegel reported to Mr. Wallerius that something was wrong on the line and Mr. Wallerius went to the line to investigate. Mr. Keegel had witnessed claimant hold down the “go” button to push meat through the metal detector even though the machine was signaling that metal was being detected. Mr. Wallerius witnessed claimant hold down the “go” button to push meat through the metal detector even though the machine was signaling that metal was being detected. Mr. Wallerius stopped the claimant and asked him to explain the process to him. Claimant explained the correct process when he stated to Mr. Wallerius that if the machine flashed red you took the meat out and re-ran it a second time. Mr. Wallerius contacted Ms. Montgomery regarding appropriate discipline.

Ms. Montgomery spoke to claimant about his actions on the tote line. He told Ms. Montgomery that if he had not operated the metal detector that way there would have been a lot of product that was being kicked out. Claimant was put on suspension pending investigation.

Upon hire claimant had signed the employer’s Product and Facility Security policy which states that all employees need to be aware of and constantly alert to any signs of food products or supplied being tampered with that would endanger the safety of the food products produced at the Hormel Foods – Knoxville, IA plant. See Exhibit 1. The policy further states that any employee caught tampering with a food product, supply or equipment would be terminated. See Exhibit 1. Claimant was discharged on November 10, 2016 by Ms. Montgomery once her investigation was complete.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

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.

Iowa Admin. Code r.871-24.32(8) provides:

(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 her own common sense and experience, the Administrative Law Judge finds that Ms. Montgomery's, Mr. Keegel's, and Mr. Wallerius's testimony is more credible than claimant's testimony.

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). 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 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is 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.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v.*

Iowa Dep't of Job Serv., 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). A lapse of 11 days from final act until discharge when claimant was notified on fourth day that his conduct was grounds for dismissal did not make final act a "past act". *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Claimant's job duties included following the policies and procedures regarding food product safety that were in place for this employer. Claimant was aware that he was not to allow the meat product to pass through the detector if it was flashing red on its first pass through. Claimant ignored this requirement and intentionally passed meat through the detector even though it was flashing red.

This employer has a right to expect that an employee will follow its reasonable policies regarding food product safety. There is substantial evidence in the record to support the conclusion that claimant deliberately violated these rightful expectations in this case. Accordingly, the employer has met its burden of proof in establishing that the claimant's conduct consisted of deliberate acts which constituted an intentional and substantial disregard of the employer's interests. These actions rise to the level of willful misconduct. As such, benefits are denied.

DECISION:

The November 30, 2016 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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