

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FILMON T ARAYA
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-07757-ML-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 1/17/21
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 March 9, 2021, (reference 01) unemployment insurance decision that denied claimant benefits based upon his discharge from employment for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on May 12, 2021. Claimant, Filmon Araya, participated personally. Employer, Tyson Fresh Meats, Incorporated, participated through witness Tami Story.

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 a Food Safety and Quality Assurance supervisor from October 30, 2017, until January 20, 2021. The incident that lead to claimant's discharge occurred on January 12, 2021. Claimant's direct supervisor was Justin Smith.

The employer has a policy, or a rule of conduct, against fighting, assaulting, and threats of violence in the workplace. Tyson employees are notified of these policies during training. These policies are also available to Tyson employees in an online format.

The employer hires a third-party company to clean the Storm Lake, Iowa plant after production is done running for the day. The third-party company is Packer's Sanitation Services Incorporated (PSSI).

On January 12, 2021, claimant was involved in an altercation with a PSSI employee. During his regularly scheduled shift, claimant confronted a PSSI employee about some barrels that were not stacked correctly. Claimant asked the PSSI employee to remove the barrels. The PSSI employee declined claimant's demand. Later on in his shift, claimant would again ask the same PSSI employee to remove the barrels. The PSSI employee explained that such a task was not

his job or part of his responsibilities. An argument ensued. At some point, the PSSI employee turned to walk away and claimant followed him. Claimant then grabbed his arm to turn him around and talk to him. This much is undisputed.

The two began swearing at one another. According to the PSSI employee, claimant then grabbed the PSSI employee under the chin and told him that if he talked to him like that again he would kill him. Claimant denies ever grabbing the PSSI employee under the chin or threatening him.

Ms. Story learned of the incident on January 13, 2021. Pursuant to its Rules of Conduct, the employer immediately suspended claimant and conducted an investigation into the January 12, 2021, incident. As part of the investigation, Ms. Story interviewed claimant, the PSSI employee, PSSI Supervisor Mario Perez, and PSSI Site Supervisor Jake Ortwine. The decision to terminate claimant was based upon these four interviews.

Neither Mr. Perez, nor Mr. Ortwine witnessed the event in question; however, claimant approached both supervisors, individually, after the incident to discuss what had happened. According to Mr. Perez, claimant confirmed the altercation occurred as described above and acknowledged that he was in the wrong. Mr. Ortwine similarly reported that claimant admitted to grabbing the PSSI employee by the arm and chin. Claimant then asked Mr. Ortwine if he should apologize to the PSSI employee. Mr. Ortwine told claimant that what he did was wrong and recommended against apologizing to the PSSI employee at that time.

The accounts provided by the PSSI employee, Mr. Perez, and Mr. Ortwine were the same or substantially similar. Their accounts match the synopsis above.

Claimant was the only individual to provide a different rendition of events during his interview. Again, claimant's story is consistent with the other accounts up until the point in which he is accused of grabbing the PSSI employee under the chin and threatening him. At hearing, claimant testified that he tried to grab the PSSI employee by the arm to continue talking to him, but the PSSI employee just kept walking away. Claimant testified it was at this point that Mr. Perez appeared, the two dispersed, and claimant went outside to try to find Mr. Ortwine to discuss what had just transpired.

Claimant was discharged from employment on January 20, 2021, based upon his threat to the PSSI employee on January 12, 2021.

Claimant is of the opinion that he was fired for essentially doing his job to the best of his ability and holding the employer to a higher standard than it was accustomed to. Claimant spent the majority of his testimony asserting the same rather than focusing on the alleged fireable offense that occurred on January 12, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.

Further, 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). 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. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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 Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

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 Ms. Story’s testimony, as well as the prior statements made by the PSSI employee, Mr. Perez, and Mr. Ortwine, to be more credible than the claimant’s. The statements collected from the PSSI employee, Mr. Perez, and Mr. Ortwine are consistent. This consistency bolsters the credibility of their accounts. Claimant’s rendition of events is initially consistent with the statements collected from the PSSI employee, Mr. Perez, and Mr. Ortwine; however, his story conveniently diverges at the point most damaging to his case. He offers no convincing explanation as to how the confrontation with the PSSI employee ended. It does not logically follow that claimant would feel the need to seek out Mr. Ortwine to explain himself if he had only engaged in a brief argument with the PSSI employee. Further, claimant offers no explanation as to why both Mr. Perez and Mr. Ortwine told Ms. Story that claimant had admitted to grabbing the PSSI employee under the chin in his conversations with them shortly after the incident occurred. In sum, claimant made several inconsistent statements regarding the events that occurred on January 12, 2021.

Employers generally have an interest in protecting the safety of their employees and invitees. The employer has presented substantial and credible evidence that claimant grabbed the PSSI employee by the chin and threatened to physically assault him. This is in violation of the employer’s known policy.

The Iowa Court of Appeals has determined that “[t]he use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made.” *Myers v. Emp’t Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990).

In this case, the claimant went beyond profanity or offensive language and made a threat of physical violence in a confrontational and disrespectful context towards the PSSI employee. The claimant's threat of harm is against the employer's best interest and is a disregard of the reasonable conduct an employer has a right to expect of its employees. Further, claimant's threats of physical aggression were in violation of specific work rules and against commonly known acceptable standards of work behavior. This behavior was contrary to the best interests of the employer and the safety of its employees and is disqualifying misconduct even without prior warning.

The employer has met its burden of proof in establishing the claimant committed job-related misconduct. As such, benefits are denied.

DECISION:

The March 9, 2021, (reference 01) unemployment insurance decision is AFFIRMED. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are withheld in regards to this employer until such time as claimant is deemed eligible.



Michael J. Lunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

June 17, 2021
Decision Dated and Mailed

mjl/ol