

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRYCE W HOLT
Claimant

CFI SALES INC
Employer

APPEAL 16A-UI-13051-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/30/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.2(1)g – Retroactive Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 30, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. After due notice was issued an in person hearing was held on December 27, 2016 in Des Moines, Iowa. Claimant participated. Employer notified the agency through their representative that they would not be participating in the hearing. Claimant's Exhibit A was entered and received into the record. Claimant waived his right to ten days' notice of the issue of his eligibility for retroactive benefits during the hearing.

ISSUES:

Was the claimant discharged due to job connected misconduct?

Is the claimant eligible for retroactive unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a rubber track coordinator beginning in June 2007 through November 3, 2016 when he was discharged. The claimant and five other highly paid employees, including the claimant's manager, were all discharged on the same day. During each of their discharge meetings each was told that the company was not in good financial shape and that their jobs were being eliminated so that the employer could make loan payments that were due. None of the employees, including claimant, were told they were being discharged due to poor performance or misconduct. The claimant knew that the company was struggling financially prior to being told that he was being discharged.

In 2015 the claimant had an issue with falling asleep at unexpected times, including one occasion while he was at work. He sought medical treatment and was diagnosed with mild sleep apnea. He was given a c-pap machine which resolved all of his issues. After obtaining medical treatment, the claimant no longer fell asleep at work.

The claimant was a top performer for the employer and had the second highest level of gross profit of all the salespeople. He was not taking any action to jeopardize any of the company's assets. He had never been warned that he was making incorrect or inappropriate pricing decisions. The claimant had full authority to set the price for any stock that had been traded in by a customer. The claimant was making money for the company. His pricing actions were all approved by his manager, who was also let go. The day after the claimant was discharged, he was called back to the office and asked at that time to sign a non-compete agreement. He refused. All of the other employees who had been discharged had previously signed non-compete agreements. Only after the claimant refused to sign the non-compete agreement did the employer contend that the claimant had been let go due to job performance issues.

When the claimant was discharged at the end of the work day on November 3, 2016, he went right to his local workforce office. Since it was almost 4:30, the time the office closes, he was rushed putting his application for benefits into the computer. He was not given proper instructions by the employees that he would be required to file weekly claims. As he was being rushed through the process, he was not given an opportunity to read all of the material provided. The claimant has since obtained a handbook for employees. He did not realize he was required to make weekly claims while waiting for an appeal hearing. The claimant has never filed for unemployment insurance benefits before this claim. The claimant has not earned any wages since he filed his claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

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

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).

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 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer simply has not met their burden to establish job connected misconduct. The claimant was not discharged due to any pricing or performance issues, but merely because the company was in financial trouble. The claimant had no warning that his job was in jeopardy or that there was conduct he needed to change in order to preserve his employment. Under these circumstances, no misconduct has been established and benefits are allowed, provided the claimant is otherwise eligible.

For the reasons that follow, the administrative law judge concludes the claimant's request for retroactive benefits is granted.

Iowa Admin. Code r. 871-24.2(1)g provides:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

Claimant was at a local workforce office on November 3, the day he was discharged and was rushed putting in his application for benefits as the office was going to close at 4:30 p.m. The

IWD employee working with him never explained to him that he was required to file weekly continuing claims. Claimant has no computer to use other than the ones at his local office. He was not given a copy of the handbook for employees when he filed his claim for benefits. Once he learned he was obligated to make weekly claims, he began doing so immediately. Incomplete information from an IWD employee is considered good cause reasons for having failed to file weekly voice response claims. Retroactive benefits are granted for the five week period from November 6, 2016 through December 10, 2016. Claimant shall be paid full unemployment insurance benefits for the five week period from November 6, 2016 through December 10, 2016.

DECISION:

The November 30, 2016, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The claimant's request for retroactive benefits is granted for the five week period ending December 10, 2106.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs