

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENNETH J DONNELLY
Claimant

MONTEZUMA MFG DIV OF DIEOMATIC INC
Employer

APPEAL 21A-UI-21092-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/15/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Kenneth J Donnelly, the claimant/appellant, filed an appeal from the September 16, 2021, (reference 01) unemployment insurance decision that denied benefits based on a June 30, 2020 discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on November 15, 2021. Mr. Donnelly participated and testified. The employer participated through Jessica Henry, human resources generalist.

ISSUE:

Was Mr. Donnelly discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Donnelly began working for the employer on April 5, 2010. He worked as a full-time cell leader. His employment ended on July 31, 2020.

On July 28, talked with the maintenance staff about parts Mr. Donnelly could use to fix the air-conditioner in his personal vehicle. One of the maintenance staff made a part for Mr. Donnelly to use but it did not work. Mr. Donnelly went into the tool crib. The maintenance staff gave him permission to do so, and Mr. Donnelly took a fitting from the tool crib and left the building. Mr. Donnelly brought the fitting back into the building the same day and put it on his desk.

The employer's policy provides that employees may be in the tool crib only if the maintenance staff gives the employee permission to do so. The policy further provides that stealing could result in discipline up to and including termination of employment.

On July 29, the employer investigated the incident and concluded that Mr. Donnell was in an unauthorized area and he stole a fitting from the company. The maintenance staff told the employer that they told Mr. Donnelly that if he was caught in tool kit he would be in trouble.

On July 31, the employer called Mr. Donnelly into the office terminated his employment for theft. Mr. Donnelly told the employer that he did not steal and that the fitting was on his desk. Mr. Donnelly had no disciplinary record prior to the termination of his employment. After Mr. Donnelly's employment was terminated, the employer saw the fitting on Mr. Donnelly's desk.

Mr. Donnelly received workers compensation through November 9, 2021. He did not report any of his workers compensation benefits when he filed his weekly claims.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Donnelly 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).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

The findings of fact show how the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used his own common sense and experience.

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.

In this case, Mr. Donnelly was in the tool kit with permission from the maintenance staff. He borrowed a fitting, with the permission of maintenance. He brought the fitting back that same day. The employer has failed to establish misconduct on the part of Mr. Donnelly. Benefits are allowed.

DECISION:

The September 16, 2021, (reference 01) unemployment insurance decision is reversed. Mr. Donnelly 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.



Daniel Zeno
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December 28, 2021
Decision Dated and Mailed

dz/scn