

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DELANCEY E SMITH
Claimant

AMERICAN PACKAGING CORP
Employer

APPEAL 19A-UI-03317-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/31/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On April 22, 2019, Delancey E. Smith (claimant) filed an appeal from the April 18, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination American Packaging Corporation (employer) discharged him for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on May 10, 2019. The claimant participated personally. The employer participated through HR Generalist Colin Hageman. The employer's Exhibit 1 was admitted into the record without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time in a pre-press position beginning on December 19, 2016, and was separated from employment on March 31, 2019, when he was discharged. The employer has a progressive disciplinary process that states missing a mandatory safety meeting is a Category 1 offense and states the first step is a verbal warning. The policy does not address falsification of company documents.

The claimant's shift typically ended at 7:00 a.m. However, each month there was a safety meeting which he was required to attend that started at 7:00 a.m. The claimant had missed the meeting in the past, but had notified management he would not be there and made arrangements to make up the meeting online.

On the morning of March 27, the claimant was required to attend a safety meeting. However, he clocked out at 7:00 a.m. and left work as he needed to get home to take care of his child. He stopped in to look for a manager to explain his absence but could not find one. Supervisor Brad Ritland reported that he witnessed the claimant sign in for the meeting and leave. Ritland reviewed the sign-in sheet after the claimant left and observed a signature next to the claimant's name. The employer then reviewed its surveillance video and observed the claimant leaving the parking lot at 7:06 a.m.

After the claimant returned from his previously approved vacation, he was discharged for falsifying company records. The claimant denied signing in for the meeting. He also had not received any prior warnings for falsifying documents or missing a mandatory safety meeting.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 provides, in relevant part:

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).

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. 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).

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." 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 decision in this case rests, at least in part, upon the credibility of the parties. The employer contends the claimant falsified documents, but the claimant denies signing in for the meeting. The claimant argued the signature on the sign-in sheet did not contain his middle initial nor did it end with "Jr." as is his customary practice. Additionally, he argued that the signature on the sign-in sheet does not match his signature for receipt of the employee handbook which he signed when he was hired. The employer did not present a witness with direct knowledge of the situation. No request to continue the hearing was made. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the claimant's recollection of the events is more credible than that of the employer. Therefore, the employer has not established that the claimant falsified company documents.

The employer has established that the claimant missed the safety meeting without prior approval, which was an isolated incident of poor judgment. As the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. 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. Benefits are allowed.

DECISION:

The April 18, 2019, reference 01, unemployment insurance decision is reversed. The 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs