

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN D QUINLAN
Claimant

CONSUMER SAFETY TECHNOLOGY LLC
Employer

APPEAL 22A-UI-05606-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/30/22
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

Claimant filed an appeal from the February 28, 2022 (reference 01) unemployment insurance decision that denied benefits finding claimant was discharged on February 1, 2022 for wanton carelessness in performing his work. The parties were properly notified of the hearing. A telephone hearing was held on April 11, 2022. Claimant participated. Employer participated through Abigail Weatherwax, Human Resources Generalist. No exhibits were admitted.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.
Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed as a full-time State Support Specialist from July 13, 2015 until his employment with Consumer Safety Technology ended on February 1, 2022. Claimant's direct supervisor was Travis Krizer, Compliance Manager.

Employer does business in multiple states and outlines procedures for each state on its SharePoint site. Employees have access to the site and procedures. If employees do not follow a state's procedures, then employer may be prohibited from doing business in that state.

On April 7, 2021, claimant received a written warning for failing to follow the proper procedures for the State of Oregon. On November 1, 2021, claimant received a final written warning for failing to follow the proper procedures for the State of Oregon. The warning stated that claimant's failure to follow procedures in the future may result in additional disciplinary action up to and including termination.

On December 23, 2021, claimant did not follow the proper procedure when authorizing the removal of a device for a customer in South Carolina. Employer learned of the December 23,

2021 issue on January 20, 2022. Employer discharged claimant on February 1, 2022 for failing to follow proper procedures after receiving a prior warning.

Claimant filed an initial claim for benefits effective January 30, 2022. Claimant was out of state from February 6, 2022 through March 1, 2022.

REASONING AND CONCLUSIONS OF LAW:

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

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 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(1)(a) provides:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). 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).

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 cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). 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 failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra; *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Claimant failed to follow proper procedure after receiving two prior warnings; the final warning put claimant on notice that his job was in jeopardy. While claimant's failure in job performance may not have been intentional, it does constitute repeated carelessness or negligence that equals willful misconduct in culpability. Employer discharged claimant for disqualifying, job-related misconduct. Benefits are denied provided claimant is otherwise eligible.

Because claimant's separation is disqualifying, the issue of whether claimant is able to and available for work is moot.

DECISION:

The February 28, 2022 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The issue of whether claimant is able to and available for work is moot.



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April 15, 2022
Decision Dated and Mailed

acw/ACW