

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MALEK M AKOL
Claimant

APPEAL 21A-UI-20753-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HORMEL FOODS CORPORATION
Employer

**OC: 07/25/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.1(113)c - Discharge for Violation of Rules
Iowa Code § 96.5(11) - Incarceration

STATEMENT OF THE CASE:

The claimant, Malek Akol, filed an appeal on September 9, 2021 from the September 1, 2021, (reference 01) unemployment insurance decision that denied benefits based upon claimant being discharged from work on July 23, 2021 for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on November 15, 2021. The claimant, participated. Claimant's non-attorney representative, Mr. Aguek, failed to register and provide a phone number to be reached, but claimant provided a number, which resulted in reaching his voicemail. A voicemail message was left. Claimant was given the opportunity to postpone the hearing to have his representative present. Claimant declined the postponement and waived his right to have his representative present. Claimant advised that his representative was working and not available and he wanted to proceed without his representative. A Dinka interpreter participated by providing interpreting services via English and Dinka. The employer, Hormel Foods Corporation, participated through Linda Green party representative, and Erin Montgomery. Judicial notice was taken of the administrative file.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony and reviewed all of the evidence in the record, the administrative law judge finds: claimant's first day of employment was in July 10, 2019; his last day worked was July 23, 2021; and he was also separated from employment on July 23, 2021. Claimant was a fulltime employee. Claimant was discharged for violation of known company rules found in the union contract regarding absences, with the recent incident being July 16, 2021.

Employer has an employee hand book and a union contract. Claimant is provided copies and copies are posted in the workplace such that claimant goes by them at least once each day. They address attendance matters, how to report absences, the point rule, etcetera. Claimant received and knew the rules/contact language.

The contract language/point system began July 20, 2020. Claimant had the below incidents:

July 28, 2020	late
October 31, 2020	emergency absence (equals any absence that is not an illness)
December 18, 2020	emergency absence
December 29, 2020	sick
April 2, 2021	late
May 4, 2021	emergency absence
June 2, 2021	unexcused no call / no show
June 8, 2021	emergency absence
June 11, 2021	sick
June 12, 2021	sick
June 25, 2021	absent, but called in
June 16, 2021	unexcused no call / no show - incarcerated

Claimant was arrested on June 16 and charged with an OWI. He missed work due to being incarcerated and did not call work due to being arrested by the police and the police taking his cell phone. Each time claimant gets points, he is counseled regarding the violation, told of corrective steps and told where he stood regarding the points and termination of employment. Claimant knew his job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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).

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 focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

Claimant knew of the policy/rule/contract language and knew where he stood regarding his points.

Iowa Admin. Code r. 871-24.1 provides:

Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

c. *Discharge*. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

Claimant violated known company rules and was discharged. Furthermore, during the hearing, it was learned the last incident was due to his incarceration.

Iowa Code section 96.5(11)a provides:

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

11. Incarceration –disqualified.

a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds all of the following:

(1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.

(3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.

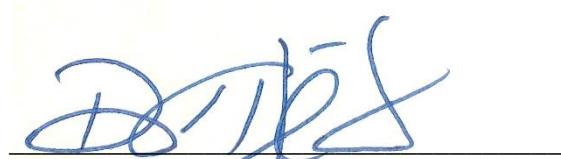
(4) The employer rejected the individual's offer of services.

b. A disqualification under this subsection 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.

Claimant missed work without telling his employer in advance, see 11a(1) and admitted that the arrest lead to a charge and conviction, see 11a(2). Claimant is disqualified for this reason as well.

DECISION:

The September 1, 2021, (reference 01) unemployment insurance decision is **AFFIRMED**. The claimant was discharged from employment due to job related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Darrin T. Hamilton
Administrative Law Judge

December 22, 2021
Decision Dated and Mailed

dh/mh