

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERRANCE L GREEN
Claimant

THRIVE TOGETHER LLC
Employer

APPEAL 21A-UI-02129-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Terrance L Green, the claimant/appellant, filed an appeal from the December 29, 2020, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 2, 2021. Mr. Green participated and testified. The employer participated through Amber Phillips, general manager and Stuart Larimer, hearing representative. Official notice was taken of the administrative record.

ISSUE:

Was Mr. Green discharged for misconduct or did he voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Green began working for the employer on May 13, 2019. He worked as a part-time cook/dishwasher. His manager was Gani Emini, the general manager at the time. Mr. Green's last day of work was September 7, 2019.

The employer's policy provides that an employee who is a No-Call/No-Show for three consecutive days is eligible for termination of their employment.

About two weeks before September 7, Mr. Green told the Mr. Emini that he was to begin school soon so his schedule would need to be adjusted. Mr. Green's schedule was adjusted but there some days that he had conflict between his work schedule and his school schedule. Sometimes Mr. Green would miss class to attend work. Mr. Green was scheduled to work on September 6. Mr. Green also had class during the time that he was scheduled to work. Mr. Green attended class and did not attend work. Mr. received a call from the employer while he was in class. The employer asked Mr. Green why he was not at work. Mr. Green told the

ONLINE RESOURCES:

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>
Claimant UI Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-claimant-handbook>
Employer UI Handbook: <https://www.iowaworkforcedevelopment.gov/employer-handbook>
Report UI fraud: <https://www.iowaworkforcedevelopment.gov/report-fraud>
Employer account access and information: <https://www.myiowai.org/UITIPaxWeb/>
National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

employer that he was in class. The employer told Mr. Green that he would be considered a No-Call/No-Show for that shift. Mr. Green was scheduled to work on September 7. He attended work that day. About thirty minutes after Mr. Green's shift began Mr. Emini told Mr. Green that his employment was terminated because he had been a No-Call/No-Show the previous day. Mr. Green was scheduled to work several days after September 7, 2019. He did not attend work because Mr. Emini told his that his employment was terminated.

Mr. Emini continues to work for the employer but did not testify at the hearing. Ms. Phillips, the current general manager, but not the general manager during the time of Mr. Green's employment, testified from the employer's records.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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 using his own common sense and experience.

In this case, the employer terminated Mr. Green's employment after one No-Call/No-Show. The presumption in Iowa law is that three days of No-Call/No-Shows is a voluntary quit without good cause attributable to the employer. Iowa Admin. Code r. 871-24.25(4). Here, the employer terminated Mr. Green's employment after only one No-Call/No-Show. The employer has not established misconduct on the part of Mr. Green. Therefore, the employer has not met its burden. Benefits are allowed.

DECISION:

The December 29, 2020, (reference 03) unemployment insurance decision is reversed. Mr. Green 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
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

March 8, 2021
Decision Dated and Mailed

dz/lj