

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHANNON K STRUCHEN
Claimant

REMBRANDT ENTERPRISES INC
Employer

APPEAL NO. 16A-UI-12502-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/23/16
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 14, 2016, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 8, 2016. Claimant participated personally. Employer participated by Pam Winkel, Lori Karr, and Adam Cook. Employer's exhibits 1-12 (including video evidence) were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 12, 2016. Employer discharged claimant on August 16, 2016 because claimant got into an aggressive foul-language laden shouting event with a coworker during an unscheduled meeting she'd called.

Claimant had received a warning in January of 2016 that she was not using appropriate methods when addressing coworkers. She received specific advice as to what to do with conflicts and to be sure to stay in contact with human resources. Claimant was seen to be very aggressive and confrontational, in contravention to company policies and values. Additionally, claimant was using her husband, who was not an employee of Rembrandt, but rather a contractor, to act as supervisor when claimant was not around. She was told not to do this as claimant's husband was not an employee and had no supervisory role or role of sharing information with claimant.

On August 9, 2016 claimant left the site where she served as supervisor to do outside work for employer. She told her husband to watch over the employees while she was gone. Claimant believed this was the best way to ensure that work was still done when claimant wasn't present. While claimant wasn't present her husband witnessed horseplay from a worker. Claimant's husband threatened the employee to get him to get back to work, and threatened to send him home if he didn't do what he was told.

That afternoon claimant had found out about the horseplay by an employee from her husband. The next morning claimant called an unscheduled meeting. Claimant had not alerted human resources that she was calling this meeting. Soon after this meeting began, claimant and the employee that had been accused of horseplay the day before got into a shouting match. Claimant didn't act as a supervisor to calm things down, but rather was not only screaming foul language back to the claimant, but also physically moving into the other employee's private space –being inches away while shouting with the claimant. She was screaming that she is the boss so the other party needed to zip it and listen to what she was saying. Claimant threatened all employees with their jobs by saying that employer was trying to get rid of them if they didn't improve output.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a

material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning respectful treatment of coworkers. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant did not become momentarily upset, but yelled at her employees for a number of minutes. Even when claimant was in no way being confronted by coworkers, she continued screaming at her workers and telling them that they had to listen to any of her decisions because she was their boss. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated November 14, 2016, reference 01, is affirmed. Unemployment insurance benefits shall be withheld 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.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs