

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REED CRUZ

Claimant

AGRI-TECH SERVICES LLC

Employer

APPEAL 20A-UI-09567-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 6, 2020 (reference 01) unemployment insurance decision that denied benefits based upon his separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on September 8, 2020. The claimant, Reed Cruz, participated personally and testified. Dan Stewart participated on behalf of the employer, Agri-Tech Services LLC. The employer's exhibits were admitted as follows: Exhibit A) Employer Termination letter, Exhibit B) text messages from Reed to Stewart following the termination, Exhibit C) pay reports, Exhibit D) the spray application report, Exhibit E) the spray map printed the morning of the incident (May 5, 2020) and Exhibit F) the bill to the application completed. No exhibits were offered on behalf of the claimant.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as operator from March 26, 2018 until he was discharged on May 20, 2020. Claimant's duties included running and operating machinery, applying chemicals, maintaining machinery and general warehouse labor. Claimant's immediate supervisor was Dan Stewart.

Mr. Stewart testified that on Tuesday, May 19, claimant was told to clean the sprayer out because he was scheduled to spray a field the next day. The claimant did not clean the sprayer that day. On Wednesday, May 20, claimant was again instructed to clean the sprayer out in the morning so he could spray the client field that day as scheduled. Claimant again refused to clean the sprayer. Mr. Stewart testified that claimant sat in the office from 8:00 AM until 11:00 when he came out of the office and began to help in the shop. Claimant left for lunch at approximately 12:30 PM. When he returned from lunch, Mr. Stewart again told claimant to clean the sprayer, as the field needed to be sprayed that day. Mr. Stewart testified that claimant said he would put his two weeks in if he was going to be forced to spray the field. Mr. Stewart told him he did not need to wait two weeks and ended his employment at that time.

All of the necessary equipment was available for claimant to clean the sprayer and spray the field that was scheduled for the day. Claimant testified that the last time he sprayed the field requested he was reprimanded by the field owner because he did not do a satisfactory job. Claimant was concerned about his ability to complete a satisfactory job on May 5, 2020.

Claimant testified that he refused to clean the sprayer because he was asked to rinse a sprayer in an illegal area. Mr. Stewart testified that he has two legal areas to rinse the sprayer at his shop. Further, Mr. Stewart ended up rinsing the sprayer himself in those areas so he could spray the field himself that day.

REASONING AND CONCLUSIONS OF LAW:

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

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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

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). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, 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).

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.* Here, the evidence shows claimant refused to do the work requested of him and then sent a text message to his employer apologizing about his behavior that day. The claimant had already sprayed the requested field and rinsed the sprayer previously. His refusal to complete the reasonable request of rinsing the sprayer and spraying the field is direct insubordination. Claimant never reported concerns about his employer's request that he rinse the sprayer and spray a field. He simply refused to do it.

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.

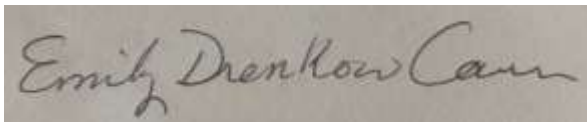
1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer met its burden of proof in establishing disqualifying job misconduct. As such, benefits are denied.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). You will need to apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The August 6, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for insubordination misconduct which is a disqualifying reason. Benefits are denied.

A handwritten signature in cursive script, reading "Emily Drenkow Carr", is shown on a light-colored background.

Emily Drenkow Carr
Administrative Law Judge

September 30, 2020
Decision Dated and Mailed

ed/sam