

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAVONTAE M THOMAS

Claimant

APPEAL 21A-UI-08223-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 09/20/20

Claimant: Appellant (2)

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

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Javontae M. Thomas, filed an appeal from the March 15, 2021 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 3, 2021. The claimant participated. The employer, Tyson Fresh Meats Inc., participated through Lori Drenzo, human resources.

The administrative law judge took official notice of the administrative records. Claimant Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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: The claimant was employed full-time as a forklift driver and was separated from employment on February 1, 2021, when he was discharged for insubordination.

When claimant was hired, he was trained on employer rules. Employer has a written rule notifying employees that being insubordinate can be grounds for discipline. Claimant had no prior warnings and was discharged based upon a single incident which reportedly occurred on January 27, 2021. According to Ms. Drenzo, claimant was discharged for yelling in a hallway and being upset with management after reporting a safety concern.

Claimant stated he and his co-worker had been repeatedly hit in their forklifts by a new forklift driver in the week leading up to separation. Claimant and his co-worker had reported to management concerns about their safety and had offered unsolicited tips to prevent him from

continuing to run into other drivers. The new driver responded by using profanity. When claimant escalated his concerns to management, the union and human resources, they did not take any action. Claimant was upset and frustrated by the situation but denied using profanity at a manager, or yelling in the hallway as alleged. He was sent home for three days and subsequently discharged. Employer presented no witnesses, statements or evidence regarding the final incident.

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.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“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).

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. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and 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.

It is true that “[t]he use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made.” *Myers v. Emp’t Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). However, the claimant’s use of one instance of profanity, when not used in front of customers, accompanied by threats or in a confrontational manner does not rise to the level of misconduct. See *Nolan v. Emp’t Appeal Bd.*, 797 N.W.2d 623 (Iowa Ct. App. 2011), distinguishing *Myers* (Mansfield, J., dissenting) (finding the matter to be an issue of fact “entrusted to the agency.”). The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct.

In this case, claimant presented credible, first-hand testimony that he repeatedly tried to make the employer aware of a new driver who was unsafe and colliding with others. When claimant’s concerns were not addressed, he became upset. The administrative law judge does not condone claimant raising his voice while upset, but under the circumstances, the conduct was not coupled with other aggravating factors. There is no evidence however that he did so in abusive or aggressive way, that was so egregious to warrant immediate discharge. Employer failed to present sufficient details to corroborate its allegation of misconduct.

Based on the evidence presented, the administrative law judge concludes the conduct for which the claimant was discharged was at most an isolated incident of poor judgment and inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. Training or general notice to staff about a policy is not considered a disciplinary warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant’s discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant’s discharge was due to job-related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The unemployment insurance decision dated March 15, 2021, (reference 04) is REVERSED. Claimant was discharged for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

A handwritten signature in brown ink that reads "Jennifer L. Beckman". The signature is written in a cursive, flowing style.

Jennifer L. Beckman
Administrative Law Judge
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June 16, 2021
Decision Dated and Mailed

jlb/scn