IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

BRIAN D WOODS Claimant **AXALTA COATINGS SYSTEMS USA LLC** Employer	**APPEAL 21A-UI-21531-DH-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/08/21** **Claimant: Respondent (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 Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Code § 96.4(3) - Able to Available for Work
Iowa Admin. Code r. 871-24.10 - Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer, Axalta Coatings Systems USA LLC, filed an appeal from the September 17, 2021, (reference 01) unemployment insurance decision that granted benefits, so long as claimant meets all the other eligibility requirements, based upon the July 23, 2021 dismissal, which the record did not show was for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephone hearing was held on November 23, 2021. The claimant, Brian Woods, participated. The employer participated through Meghan Hamaday and Laleh Jahromi. The following exhibits were admitted: Claimant's Exhibit of 10 pages and Employer's Exhibit of 11 pages. Judicial notice was taken of the administrative record.

ISSUES:

Was the separation a layoff, discharge for misconduct or a voluntary quit without good cause?
Was the claimant overpaid benefits?
Should claimant repay benefits and/or charge employer due to employer participation in fact finding?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time control room operator (also known as a polymer process technician, a PPT), with his first day of employment being February 1, 2013, until his last day of work on January 17, 2021. He was separated from employment on July 23, 2021, when the employer discharged him, asserting he had no leave of absence left to use and is unable to return to work and there is no work for him to perform, even if he was physically able to return to work.

Claimant was injured on the job. He had surgery to address the injury on January 18, 2021. Claimant was on a leave of absence from employer from January 18, 2021 through July 23, 2021. Dr. Brollier provided a status update on claimant on June 11, 2021. This update is page 2 in Claimant's Exhibit and page 5 in Employer's Exhibit. The one page document states that as of June 11, 2021 is released to work with the following activity restrictions: "No lifting, pushing, pulling greater than 25 pounds below shoulder height with right upper extremity; no lifting greater than 10 pounds above shoulder height with right upper extremity." The restriction applies to all activity (both work and non-work). Dr. Brollier's status update also states that as of July 11, 2021, claimant may return to work without restrictions and that will be at MMI (maximal medical improvement).

Claimant was able to work and available to work with the restrictions commencing June 11, 2021. Employer did not have him work, as they assert they had no work within the restrictions. Claimant was able to work and available to work without any restrictions commencing July 11, 2021, per the June 11, 2021 Dr. Brollier's status update. Employer failed to allow claimant to return to work. Employer believed the letter was not a release to work without restrictions, when the language states that was what it is. Employer asserts leave was exhausted on July 18, 2021, and employment will end on July 23, 2021. However, claimant was cleared for work with no restrictions as of July 11, 2021. Claimant communicated with employer who did not allow him to return. Employer's testimony was they did not have any work for claimant to perform even if he was medically cleared and could return to work.

REASONING AND CONCLUSIONS OF LAW:

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

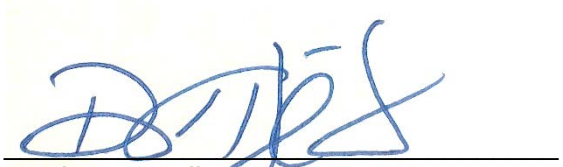
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *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.

Employer's reason to discharge claimant for work without restrictions is factually incorrect. Leave was not exhausted, as he was released to work prior to the leave being exhausted. Most telling is employer stating that even if he was cleared for work with no restrictions (which he was) there was no work for him to perform. Employer did not have a disqualifying reason to discharge claimant. No disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

DECISION:

The September 17, 2021, (reference 01) unemployment insurance decision is **AFFIRMED**. Claimant 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. All other issues in this appeal are moot.



Darrin T. Hamilton
Administrative Law Judge

December 30, 2021
Decision Dated and Mailed

dh/scn