

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

ADAM T DONALD
Claimant

APPEAL NO: 18A-UI-11820-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NOBLE FORD OF NEWTON INC
Employer

OC: 11/11/18
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 5, 2018, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 27, 2018. The claimant participated in the hearing. Cyrus Glennon, General Manager; Matt Karnatz, Fixed Operations Director; and Nick Nichols, Owner; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time technician for Noble Ford of Newton, Inc. from May 14, 2015 to November 15, 2018. He was discharged after participating in an altercation with a salesman.

On November 13, 2018, Salesman Cory Allison was in the shop looking for a set of keys in a technician's toolbox. That technician was not at work and the claimant was upset the salesman was looking in the other technician's toolbox. They had words and then the claimant went to Fixed Operations Director Matt Karnatz and notified him that he and Mr. Allison had a verbal exchange. Mr. Karnatz talked to Mr. Allison who said he felt disrespected and Mr. Karnatz told him it was best to stay out of the shop.

Around 8:30 a.m. on the morning of November 14, 2018, Mr. Allison went back to the shop to apologize to the tech whose toolbox he was trying to find the keys in the day before and had another verbal confrontation with the claimant. Mr. Allison felt the claimant was in his personal space and pushed him backward and the claimant threw brake cleaner on him. Mr. Karnatz went out to the shop and saw Mr. Allison draw his fist back to swing at the claimant and hit him in the back of the head. Mr. Karnatz then separated the two men. The claimant went outside to

cool down and Mr. Allison told General Manager Cyrus Glennon and the claimant had a fight and he hit the claimant. Mr. Glennon sent Mr. Allison home. Mr. Karnatz told the claimant to go back to work. Around 9:30 a.m. Mr. Karnatz notified the claimant he initiated the fight and the claimant denied it. Mr. Karnatz said if he discharged Mr. Allison he would have to discharge the claimant as well. The claimant stated he was going to seek medical and legal advice. Mr. Karnatz told the claimant both he and Mr. Allison were parties to a physical confrontation and their employment would be terminated if they could not get along. The claimant left shortly afterward because his head and neck hurt. While he and Mr. Allison were gone, Mr. Karnatz and Mr. Glennon spoke to the owner who, in turn, talked to the employer's human resources group and the decision was made to terminate both the claimant and Mr. Allison for fighting at work in violation of the employer's policy.

The claimant has claimed and received unemployment insurance benefits in the amount of \$2,335.00 for the five weeks ending December 22, 2018.

The employer did not participate in the fact-finding interview. The representative called the employer's human resources department and was told by Cassie he needed to speak to Brenda. She transferred the fact-finder to Brenda's voice mail because she was not in the office yet.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While the claimant denies any blame for the fight November 14, 2018, he initiated the verbal conflict November 13, 2018, when he yelled at Mr. Allison for looking for keys in another technician's toolbox. When Mr. Allison tried to apologize to that technician and explain what happened November 14, 2018, the claimant again interjected himself further in the situation and violated Mr. Allison's personal space and Mr. Allison shoved him. The claimant countered the shove by throwing highly toxic brake cleaner on Mr. Allison. Throwing a dangerous substance on Mr. Allison was not a proportionate response to a shove. The claimant apparently thought that ended the encounter because he turned his back on Mr. Allison who proceeded to hit him in the back of the head before Mr. Karnatz broke up the confrontation. Both men participated in the fight.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the

claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

The employer did not participate in the fact-finding interview. Consequently, the claimant's overpayment of benefits is waived as to the claimant and his overpayment of benefits, in the amount of \$2,335.00 for the five weeks ending December 22, 2018, shall be charged to the employer's account.

DECISION:

The December 5, 2018, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The employer did not participate in the fact-finding interview within the meaning of the law. Therefore, the claimant's overpayment of benefits, in the amount of \$2,335.00 for the five weeks ending December 22, 2018, is waived as to the claimant and that amount shall be charged to the employer's account.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn