

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALEB E GUYTON

Claimant

APPEAL NO. 16A-UI-02844-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEST BUY STORES LP

Employer

OC: 02/07/16

Claimant: Respondent (2)

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

Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 26, 2016, reference 01, decision that allowed benefits to the claimant, provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on February 10, 2016 for no disqualifying reason. After due notice was issued, a hearing was held on March 22, 2016. Claimant Caleb Guyton participated. Sabrina Bentler of Corporate Cost Control represented the employer and presented testimony through Chase Cycak and James Leek. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Four into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Caleb Guyton was employed by Best Buy Stores, L.P., as a full-time Double Agent until February 10, 2016, when the employer discharged him based on his conduct during a February 3, 2016 disciplinary meeting with his immediate supervisor, Case Cycak, Deputy Field Marshall. Mr. Guyton's work duties included installing home theatre systems at customers' homes and

completing associated documentation. The employer required customers to provide written acknowledgement of receipt of merchandise at the time of delivery. Mr. Guyton was responsible for having customers sign the appropriate form at that time he delivered and installed equipment.

On February 3, Mr. Cycak summoned Mr. Guyton to a meeting to address Mr. Guyton's failure earlier that day to comply with a directive that he take the appropriate form with him to a customer's home so that the customer could acknowledge receipt of merchandise. Mr. Guyton had told Cycak that he had been too busy to get the form. Mr. Guyton had the customer sign a blank piece of paper instead. When Mr. Cycak began the meeting by reading from the written reprimand, Mr. Guyton became belligerent. Mr. Guyton yelled, "Fuck you. This bullshit." Mr. Guyton accused Mr. Cycak of setting forth lies in the written reprimand. Another Manager, Carlos Perez Mesa, was present and tried to persuade Mr. Guyton to calm down. Mr. Cycak decided it was best to terminate the meeting and return to the matter later. Mr. Cycak asked Mr. Guyton to provide his work keys and to go home and cool down. Mr. Guyton yelled in response, "Fuck you. I'm not giving you my fucking keys. We're having this fucking discussion right now." Mr. Guyton continued to assert that Mr. Cycak had lied in the written reprimand. When Mr. Guyton saw the written reprimand that the reprimand was characterized as an Informal Discussion, he signed the reprimand and left. Neither Mr. Cycak nor Mr. Perez Mesa had used profanity or had yelled at the meeting. Mr. Cycak and Mr. Perez Mesa completed written statements concerning what had occurred at the meeting and referred the matter to the employer's human resources department for a decision about whether Mr. Guyton would be discharged from the employment. Mr. Guyton continued to report for work and perform his regular duties. On February 9, Mr. Guyton and Mr. Cycak had a civil conversation about Mr. Guyton's approach at the February 3 meeting not being productive.

On February 10, 2016, James Leek, Field Marshall, summoned Mr. Guyton to a meeting to discharge Mr. Guyton from the employment. Mr. Leek advised Mr. Guyton that the inappropriate conduct at the February 3 meeting was the basis for the discharge. Mr. Guyton declined the opportunity to provide comments on the termination document. Mr. Guyton signed the termination document.

Mr. Cycak had become Mr. Guyton's supervisor in July 2015. Mr. Cycak had on occasion verbally counseled Mr. Guyton regarding inappropriate language and discussion.

Mr. Guyton established a claim for benefits that was deemed effective February 7, 2016. Mr. Guyton received \$2,078.00 in benefits for the five-week period of February 7, 2016 through March 12, 2016.

On February 25, 2016 a Workforce Development claims deputy held a fact-finding interview to address Mr. Guyton's separation from Best Buy. The employer's representative of record is Corporate Cost Control. Corporate Cost Control received appropriate notice of the fact-finding interview. On February 22, 2016, Homer Wren, Claims Analyst for Corporate Cost Control, submitted a 10-page fax that included the Involuntary Separation Notice, the Performance Counseling Record, an Acknowledgement of Receipt of Orientation Handbook, and the employer's Inappropriate Conduct Policy. The claims deputy attempted to reach Mr. Wren at the time of the fact-finding interview, but Mr. Wren did not answer. Corporate Cost Control did not make anyone from its company or from Best Buy available for the fact-finding interview. The claims deputy left a voicemail message for Mr. Wren. The written materials submitted by Corporate Cost Control for the fact-finding interview provide no information regarding what

specifically Mr. Guyton had done to engage in inappropriate conduct. Mr. Guyton provided a statement to the claims deputy at the time of the fact-finding interview. There is no indication in that statement that Mr. Guyton was attempting to engage in fraud or intentional misrepresentation.

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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether

the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. Iowa Dept. of Job Service, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. Deever v. Hawkeye Window Cleaning, Inc. 447 N.W.2d 418 (Iowa Ct. App. 1989).

The weight of the evidence in the record establishes that Mr. Guyton did indeed repeatedly direct patently offensive language at Mr. Cycak during the February 3, 2016 meeting and that he did so as a direct challenge to Mr. Cycak's supervisory authority. The weight of the evidence indicates that Mr. Guyton did indeed yell at Mr. Cycak. That too was an attack on Mr. Cycak's authority. The weight of the evidence indicates that Mr. Guyton's challenge to Mr. Cycak's supervisory authority included a refusal to leave for the day when directed to do so combined with further offensive language directed at Mr. Cycak. The weight of the evidence fails to support Mr. Guyton's assertion that his outburst was prompted by ongoing bullying perpetrated by Mr. Cycak or that Mr. Cycak in any way contributed to the escalation of the disciplinary meeting. Mr. Guyton's verbal attack of Mr. Cycak demonstrated a willful and wanton disregard of the managerial hierarchy the employer had put in place as well as willful disregard of the standards of conduct the employer reasonably expected of employees.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Guyton was discharged for misconduct. Accordingly, Mr. Guyton is disqualified for benefits until 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 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 § 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 \$2,078.00 in benefits for the five-week period of February 7, 2016 through March 12, 2016.

Iowa Administrative Code rule 817 IAC24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.
24.10(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.

The evidence in the record establishes that the employer had appropriate notice of the fact-finding interview, but did not in fact participate in the fact-finding interview within the meaning of the law. The employer's third-party representative was not available at the number he provided for the fact-finding interview. The documents the employer's representative provided for the fact-finding interview did not provide detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. Indeed, one cannot tell from those materials what Mr. Guyton did that constituted inappropriate behavior.

Because Mr. Guyton did not engage in fraud or willful misrepresentation at the time of the fact-finding interview, and because the employer failed to participate in the fact-finding interview within the meaning of the law, Mr. Guyton is not required to repay the overpaid benefits. The overpaid benefits may be assessed to the employer's account. However, the employer's account is relieved of liability for benefits paid for the period on or after the mailing date of this decision.

DECISION:

The February 26, 2016, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant was overpaid \$2,078.00 in benefits for the five-week period of February 7, 2016 through March 12, 2016. The claimant is not required to repay the overpaid benefits. The overpaid benefits may be assessed to the employer's account. However, the employer's account is relieved of liability for benefits paid for the period on or after the mailing date of this decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs