

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID D PRICE

Claimant

APPEAL 22A-UI-01378-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GROUNDWORKS OPERATIONS, LLC

Employer

OC: 10/31/21

Claimant: Respondent (1)

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

Iowa Code § 96.5(1) – Voluntary Quit

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the December 7, 2021, (reference 02) unemployment insurance decision that allowed benefits based upon a finding that claimant was discharged with no evidence of misconduct. The parties were properly notified about the hearing. A telephone hearing was held on February 7, 2022. Claimant David D. Price participated and testified. Employer Groundworks Operations, LLC participated through human resources generalist Angelita Tolliver. The administrative law judge took official notice of the administrative record.

ISSUES:

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

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a crew member from July 19, 2021, and was separated from employment on October 28, 2021, when he was discharged.

Employer told claimant upon hire that after 90 days he could be eligible for a raise. On October 28, 2021, when claimant's supervisor Jeremy Abernathy was leaving for the day, claimant asked to speak to him. Claimant asked Abernathy for a raise because he had been working for approximately 90 days and had received no negative feedback regarding his performance. Abernathy laughed at claimant and told him he did not perform well enough to warrant a raise. Abernathy told claimant he did not need him any longer, and told him to leave his work phone, credit card, and tablet. Claimant turned in these items and left. Employer had not previously raised any issues with claimant's performance. Claimant had no intention of quitting and would have remained employed if not told to leave. .

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,124.00, since filing a claim with an effective date of October 31, 2021, for the four weeks ending November 27, 2021. Employer did not participate in the fact-finding interview.

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 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).

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.

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).

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. No request to continue the hearing was made and no written statement of the individual was offered. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

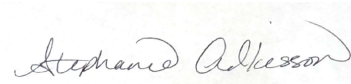
An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant that his poor performance could lead to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

Claimant was discharged after seeking a raise and being told his performance was not adequate. 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, employer incurs potential liability for unemployment insurance benefits related to that separation. Employer has not met the burden of proof to establish that claimant engaged in misconduct that would disqualify him from benefits. Benefits are allowed.

Because claimant is eligible for benefits, the issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.

DECISION:

The December 7, 2021, (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.



Stephanie Adkisson
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February 28, 2022
Decision Dated and Mailed

sa/kmj