

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATSY A WEIMER
Claimant

APPEAL NO. 17A-UI-09026-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CNH AMERICA LLC
Employer

OC: 08/06/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Patsy Weimer (claimant) appealed a representative's August 25, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with CNH America (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 22, 2017. The claimant participated personally. Carl Bergman, former co-worker, and Dougls Brown, bargaining committee chair for United Auto Workers Local 807, also testified on behalf of the claimant. The employer participated by Joyce Stimpson, Human Resources Manager, and Valerie Hammond, Human Resources Representative. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 29, 2012, as a full-time weld float. The claimant signed for receipt of the employer's Standards of Conduct on January 20, 2015.

The employer issued the claimant warnings for attendance issues on May 16, June 21, July 8 and 13, August 24, 2016, March 7, 9, and 28, 2017. All but four of the absences were due to sickness and properly reported. The claimant was a second vice president for his union's local. Three of the remaining four absences were for union business and the employer forgot to excuse the absences while he was representing other employees. The final absence was a tardy that occurred when the employer locked out his badge. The claimant immediately went to the guard to allow him admittance. There is a company rule which does not allow truck traffic during shift changes. The guard allowed all the truck traffic through the gates before helping the claimant. The claimant was tardy for work.

On October 12, 2016, the employer issued the claimant a warning for poor weld quality and leaving work without permission. On March 14, 2016, the employer issued the claimant a

warning for a safety violation. On March 14, 2017, the employer saw ten employees use an incorrect door to enter the building. It issued the claimant a warning on March 16, 2017. None of the other employees were warned. The employer notified the claimant each time that further infractions could result in termination from employment. The claimant felt he was being singled out because of his union involvement.

On June 16, 2017, the claimant was working with approximately ten people. His team leader, Donna Ferguson, let about eight people leave work early, before 1:15 p.m. The team leader walked up to the claimant and told him that he owed her. She said that when he finished the project he was working on he could leave. He thanked her. They smiled and she said, "Have a good weekend". The claimant finished and punched out at 1:15 p.m., prior to the end of his shift, 2:30 p.m. The team leader told the employer the claimant left work before 2:30 p.m. without permission. On June 19, 2017, the employer terminated the claimant for leaving work before the end of his shift.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose to provide written statements. The statements do not carry as much weight as live testimony because the testimony is under oath and the witness can be questioned. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's August 25, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs