

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTHONY Y HAWKINS
Claimant

PLUMROSE USA INC
Employer

APPEAL 21A-UI-05004-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/06/20
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Anthony Hawkins (claimant) appealed an Iowa Workforce Development February 2, 2021, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Plumrose USA (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2021. The claimant participated personally. The employer was represented by Jackie Boudreaux, Hearings Representative, and participated by Ezra Ling, Human Resources Generalist. The administrative law judge took official notice of the administrative file.

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 worked for the employer from November 4, 2019, through December 3, 2020, and at the end of his employment, he was working as a full-time material handler. He signed for receipt of the employer's handbook on November 5, 2019. The handbook states that a worker who accrues twelve attendance points in twelve months will be terminated.

At the time of hire, the claimant was a student in Lincoln, Nebraska, and his supervisor allowed him to be a few minutes late for his shift after his classes. When that supervisor left, the claimant got a new supervisor. The new supervisor told the claimant he would work with the claimant and allow him to be late due to his class schedule. The claimant showed the supervisor his schedule and the supervisor appeared to be helpful.

The claimant did not know the supervisor was recording every class day as a tardy from December 13, 2019, through November 20, 2020. The claimant became aware of the problem when the employer issued him a warning on November 23, 2020, for having accrued 8.5 attendance points. The claimant was a few minutes late on each of the days. The claimant

complained to a person in the human resources department. They said it was too late for those dates.

The claimant was a few minutes late on November 24, 30, December 1, 2, and 3, 2020, due to his class schedule. The employer terminated him on December 4, 2020, for attendance issues.

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).

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

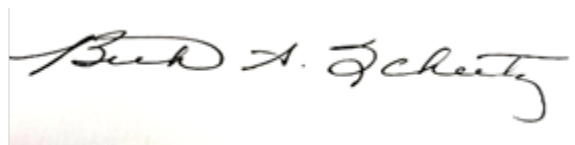
the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer terminated the claimant for tardiness. The claimant provided a defense the employer's claim of tardiness. The claimant has raised this defense since November 2020. The employer did not provide an eyewitness, the claimant's supervisor, to rebut the claim that the employer and claimant had an agreement not to count the claimant as tardy.

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 not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eyewitness 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 February 2, 2021, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

June 4, 2021
Decision Dated and Mailed

bas/kmj