

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GEORGE CIVITATE

Claimant

SYNERGY CONTRACTING LLC

Employer

APPEAL 20A-UI-10123-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/20

Claimant: APPELLANT (2)

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

STATEMENT OF THE CASE:

On August 25, 2020, the claimant filed an appeal from the August 19, 2020, (reference 02) unemployment insurance decision that denied benefits based on voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on October 2, 2020. Claimant participated called Matt Bartleson as a witness. Employer participated through Tim Bianchi, Human Resources.

ISSUES:

Did claimant commit job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in February, 2020. Claimant last worked as a full-time laborer/operator. Claimant was separated from employment on June 11, 2020, when told by Page Naibor, Safety Director, he was discharged for leaving the scene of an accident.

Claimant was operating an End Loader at a work site. Claimant was on the road and backed into a car. Claimant and the driver of the car spoke and exchanged information. Claimant asked the driver of the car if she would mind if he went and got his supervisor that was nearby and she agreed. Claimant went and reported the accident to his supervisor Mr. Bartleson. Claimant and Mr. Bartleson returned to the accident site and waited for the police. Mr. Bartleson contacted Ms. Naibor to report the accident. Claimant told Mr. Bartleson he was going to the convenience store to use the restroom. Mr. Bartleson reported to Brad Smith, their overall supervisor that claimant had left and was sure claimant was coming back as claimant was afraid he might be fired. Claimant returned in a few minutes and helped complete the accident report. Claimant had previously been put on probation by Mr. Smith and banned from operating equipment. Mr. Bartleson understood that the claimant was allowed to operate equipment again and authorized claimant to drive the End Loader. Claimant and Mr. Bartleson testified that Mr. Smith had seen claimant operating equipment after his probation and thought claimant was allowed to resume.

Mr. Bianchi testified that claimant was discharged for leaving the scene of the accident and for operation of equipment.

REASONING AND CONCLUSIONS OF LAW:

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 to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of

a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

Claimant did not leave the scene of the accident other than for a few minutes to use a restroom. While Mr. Bartleson thought claimant might not return, claimant returned like he said he would. Claimant had permission from his supervisor, Mr. Bartleson to operate equipment. There is no evidence of job related misconduct.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The August 19, 2020, (reference 02) unemployment insurance decision is reversed. Benefits are awarded provided claimant is otherwise eligible.



James F. Elliott
Administrative Law Judge

October 6, 2020
Decision Dated and Mailed

je/scn