

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PATRICK D WANIOREK
Claimant

ALBERT AUTO SHUEYVILLE LLC
Employer

APPEAL NO. 17A-UI-09266-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/13/17
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 31, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 28, 2017. Claimant participated personally. Employer participated by attorney Landon Dufoe and witness Charlie Riley. Employer's Exhibits 1-4 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 9, 2017. Employer discharged claimant on August 10, 2017, because claimant allegedly billed a customer for changing a gasket on an oil pan when the oil pan gasket had not in fact been changed.

Employer stated that claimant had worked on a vehicle with an oil leak on July 12, 2017. The claimant spoke with the manager about the leak, and together they diagnosed the problem. It was not the gasket on the oil filter as they originally had thought, but rather the gasket on the oil pan that was the root of the oil leak. Claimant explained to the customer that he would be replacing the oil pan gasket, and had employer order the gasket to be used. Claimant stayed late that night to finish the work by himself, and billed customer for his work in replacing the gasket.

Approximately a month after the gasket was replaced, the customer returned, complaining about the same oil leak. Employer raised up the vehicle and noticed that telltale signs that the previous repairs had actually been done – including removal of the original rivet holding the gasket and marks on nuts that were removed – were not present on the vehicle. The service manager noticed that the leak was in the same place he'd seen the leak a month earlier. Claimant stated that he'd replaced the gasket, and done so without having to fully remove the oil pan. Employer testified that this was not physically possible as the fill tube reaches too deep

into the oil pan to insert a gasket under it. Claimant countered that one simply has to raise the vehicle to allow this to happen. As a result of this, claimant was terminated from his position.

After the termination, employer found additional factors that caused them to believe that they'd been correct in terminating claimant - like the gasket that had been ordered was hidden away, and additional bolts did not show coloring they should show after an oil pan is dropped. None of these factored into the termination itself.

Claimant stated that he did do the job that he billed for. He stated that employer's explanation as to the requirements to change an oil pan gasket in the vehicle were not necessarily correct, and that he was able to accomplish the task through methods different than the recommended method. Claimant stated he had 25 years of auto maintenance experience, and was able to accomplish the task in a different manner. Claimant further stated that he was not able to look at the car when the customer brought it back, so he couldn't comment about the ongoing leaking of the oil pan.

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra. In contrast, 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id. In this matter, employer's witnesses gave specifics as to the oil pan gasket and how it couldn't have been replaced in the way that claimant stated it was. There were multiple indications on the vehicle that employer observed prior to the termination that led to said termination. These examples by employer's witness are deemed more credible than the statements of claimant as to his actually changing the oil pan gasket.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning fraudulently charging a customer for services that weren't performed. The last incident, which brought about the discharge, constitutes misconduct because claimant knew not to charge customers and to be paid for services that were not actually performed. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated August 31, 2017, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn