

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERRY L TIMSON
Claimant

IOWA PREMIUM LLC
Employer

APPEAL 17A-UI-06821-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/04/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 26, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 24, 2017. Claimant participated. Employer did not participate. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying 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 on July 30, 2015. Claimant last worked as a full-time maintenance electrician. Claimant was separated from employment on May 26, 2017, when he was suspended and later terminated.

Employer is a meat production plant. When production equipment malfunctions, it is common for the maintenance department to create a "homemade, temporary" fix until the factory replacement parts come in and the equipment can be fixed properly. Claimant's supervisors were aware of this procedure, and claimant was never warned he could be terminated for temporarily fixing equipment until it could be fixed properly.

On May 22, 2017, claimant reported to work and found a well saw on a bench in the maintenance shop. The saw had been disassembled by a person working first shift and a homemade replacement cord was lying next to the saw. Employer did not have the factory replacement cord available. Claimant attached the replacement cord to the well saw and left the equipment on the bench.

Approximately one or two days later, claimant was called into the office and was told the way the cord was repaired was unsatisfactory and dangerous. Claimant explained that was how he had been fixing equipment throughout his employment. Employer was not receptive to

claimant's explanation. Claimant was suspended on May 26, 2017, and terminated on June 1, 2017.

Claimant was not aware he could be terminated for attaching the replacement cord to the well saw.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 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 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.

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 work-connected misconduct as defined by the unemployment insurance law. *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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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 does not constitute 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).

In this case, employer kept its production plant functional by allowing its maintenance department to temporarily fix equipment until the factory parts came in and the equipment could be properly fixed. Claimant's supervisors were aware of this. Claimant was never warned regarding his conduct, and was not aware he would be terminated for fixing the well saw by using a homemade cord. Employer failed to establish claimant was terminated for job-related misconduct.

DECISION:

The June 26, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
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Decision Dated and Mailed

cal/scn