

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMIE M FOOTE
Claimant

INTERSTATE POWER & LIGHT COMPANY
Employer

APPEAL 14A-UI-13287-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/30/14
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 15, 2014, (reference 01) unemployment insurance decision that denied benefits based upon his separation. The parties were properly notified about the hearing. A telephone hearing was held on January 22, 2015. The claimant participated. The employer participated through Teresa Baumann, Senior Attorney, and witnesses, Angie Leyden and Matt Higgins. Erin Miller was an observer. Employer Exhibits One through Eight were 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: The claimant was employed part-time as a meter reader. The claimant was discharged on November 19, 2014 for making misleading and dishonest statements to management and failing to report a work injury immediately. (Exhibit One.)

Prior to the final incident, the claimant was given a last chance agreement on June 6, 2014, based on prior actions involving the claimant's truthfulness about absences (Exhibit Two). The last chance agreement put the claimant on notice that he was on a final warning and his job was in jeopardy. It further laid out expectations that the claimant must comply with all policies and provide documentation regarding any absences.

The claimant called out of work on November 10 through November 12, 2014 stating he had foot pain. The employer called him to remind him that he needed a doctor's note to cover his absences and said to call the worker's compensation carrier to report the injury. When the claimant reflected on what may have caused the injury, he could only remember twisting his foot the prior week a little bit when stepping on a walnut when performing work. At the time he stepped on the walnut, there was no pain or injury associated with his foot, so he had no reasonable belief that he had sustained a work-related injury that needing reporting and he did not call the worker's compensation carrier.

The claimant went to the doctor. At the time of his doctor's visit he was unsure what caused his injury or whether it was work related. He told his employer he was uncomfortable filing a worker's compensation claim until a doctor confirmed he had a work-related injury. When the claimant showed up to work with his doctor's note on Thursday, he was placed on an administrative leave because the employer believed an odor coming from the claimant may be alcohol. The claimant was never tested for alcohol and said the only odor he would have had was his cologne.

While on administrative leave, the claimant had a second doctor's appointment due to continued pain and was ultimately diagnosed after several doctors' appointments with blood clots in his foot, unrelated to the walnut or a work-related injury. He did report the injury to the worker's compensation carrier on November 17, at the employer's request, before he was discharged, and then called back on November 24, 2014 to cancel, when it was determined the blood clots were not work related.

The claimant subsequently discharged the claimant on November 19, 2014 because he made "misleading and dishonest statements to management, failed to report a work injury immediately (but no later than the end of his scheduled shift), and violated both company Safety Rules and his Last Chance Agreement...(Exhibit One)."

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the 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.

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.

Courts have recognized a distinction between the word "misconduct" in labor law and "misconduct" as defined for unemployment compensation purposes. Misconduct serious enough to warrant an employer to fire an employee is not necessarily serious enough to warrant the forfeiture of compensation benefits. *Breithaupt v. Emp't Appeals Bd.*, 453 N.W.2d 532, 535 (Iowa 1990). Misconduct sufficient to disqualify a claimant from receiving unemployment benefits "connotes some deliberate action or omission or such carelessness as to indicate a wrongful intent." *Billingsley v. Iowa Dep't of Job Serv.*, 338 N.W.2d 538, 540 (Iowa Ct. App. 1983). "The focus is on deliberate, intentional or culpable acts by the employee." *Gimbel v. Emp't Appeal Bd.*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The claimant presented credible testimony that he did not present misleading or dishonest statements to the employer over the course of his blood clots being diagnosed. The claimant reported he needed time off due to a foot injury. He could not recall an event that triggered his foot pain and on more than one occasion told his employer he was not going to report a worker's compensation injury until he knew the extent of the injury from a doctor's diagnosis. He kept his employer updated about the uncertainty of his pain until he received a diagnosis.

The employer also discharged the claimant for failing to report a work injury: The employer has a right to request its employees to immediately report work-related injuries given the legal implications. However, this was not a normal injury; the claimant's blood clots were not a typical cause-and-effect injury that could clearly identify the root of the injury, at the time the pain occurred. Accordingly, the claimant did not fail to report a work injury at the end of his shift.

It is understandable that the employer was concerned due to the claimant's history. His last chance agreement had been triggered by attendance abuse and dishonesty. When the claimant began calling off work with an injury, the employer was within its rights to request supporting documentation and in this case, the claimant supplied the requested documentation each time. The employer did also advise the claimant he should call its worker's compensation carrier, and after a week, the claimant did call. The claimant credibly testified he knew his job was in

jeopardy and did not want to accuse his employer of a work-related injury until a treating physician could confirm it. The employer testified that in this case there was no harm in the claimant's conduct of waiting to report.

The employer certainly had reasonable work rules requiring workers to comply with safety policies and report on the job injuries immediately. In this case, the employer has failed to prove that the claimant's conduct was an intentional disregard of the employer's interests or of the employee's duties and obligations to the employer. The claimant knew his job was in jeopardy and would not report a work-related injury until he knew for certain it was related to work, such as stepping on a walnut. At most, he delayed his employer's request to report for one week until he had a diagnosis. This is not misconduct. This ruling simply holds that the claimant did not have the requisite level of intent or negligence for his conduct to qualify as misconduct under Iowa law, in part because the conduct for which the claimant was discharged. Benefits are allowed.

DECISION:

The December 15, 2014, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs