

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

YACINE BOURAHLA
Claimant

RTL/AMAZON
Employer

APPEAL 21R-UI-11704-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/08/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On January 9, 2021 (claimant/appellant) filed an appeal from the December 30, 2020, reference 01, unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for March 11, 2021, at 11:00 a.m. The claimant did not register until after the 15-minute grace default period had lapsed. The administrative law judge issued a default decision in 21A-UI-02808-SN-T.

The claimant appealed the default decision in 21A-UI-02808-SN-T to the Employment Appeal Board ("EAB"). The EAB remanded the case back to the administrative law judge in 21B-UI-02808 because he was only 17 minutes late for his scheduled hearing. A second hearing was scheduled for July 16, 2021 at 8:00 a.m. The claimant participated. The employer participated through Chief Operating Officer Jonathan Renaud.

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 full-time as a driver from April 20, 2020, and was separated from employment on September 5, 2020, when he was discharged. The claimant reported directly to Chief Operating Officer Jonathan Renaud.

The employer has an anti-violence and anti-harassment policy. At the time of his hire, the claimant acknowledged he received a copy of the policy.

On July 23, 2020, the claimant was scheduled to deliver to a house with a gate. The customer reported to Amazon and the employer that he inappropriately showed his frustration with the customer, after he did not respond to the first request to open the gate. Mr. Renaud used the word "fuck" when he was speaking with the claimant about the situation that occurred on July

23, 2020. The claimant received a tier two infraction for this incident occurring on July 23, 2020, if an employee receives three of these infractions, then they are terminated.

On September 5, 2020, the claimant was advised that his driving score was lower than 700 based on Amazon's contract criteria. In response, the claimant alleged he was being treated unfairly and he started yelling. The claimant did not commit any violent acts on that date. He did not use epithets other than the use recounted below nor did he use any discriminatory language on that date. Specifically, the claimant alleged his receipt of a disciplinary action for yelling at a customer on July 23, 2021 was discriminatory because Mr. Renaud used of the word "fuck" that same day without consequence. The claimant was escorted off of the property on that day.

At 6:00 p.m. on September 5, 2020, Mr. Renaud asked if the claimant was coming to work on the following day. Mr. Renaud also said that he would not accept a score in the 500 level again. In response, the claimant alleged Mr. Renaud was discriminating against him and said he would be sending an email to former Amazon Chief Operating Officer Jeff Bezos and would file a lawsuit. The claimant and Mr. Renaud spoke about his use of paid time off in an exchange of two text messages. The claimant then returned to accusing Mr. Renaud and supervisors generally of being racists. The claimant then sent a text message to Mr. Renaud stating that he would be suing the company regarding his termination. Mr. Renaud asked him not to contact him on the phone anymore and re-directed him to only contact him through the use of his professional email.

On September 5, 2020, Mr. Renaud terminated the claimant because he accused him personally and the employer's management generally of discrimination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for non-disqualifying conduct.

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The decision in this case rests, at least in part, on the credibility of the witnesses. 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 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. *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. *Id.*

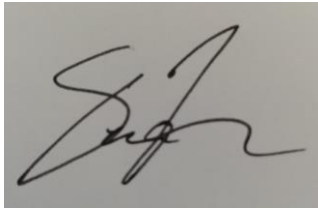
After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events.

The administrative law judge disagrees with the representative and Mr. Renaud that the claimant engaged in misconduct. The claimant may have misinterpreted some interactions or the operation of the employer's policies as discriminatory. He may have asserted his rights to employment free from discrimination in a manner that would not be protected under the Iowa Civil Rights Act or Title VII. That is not the question before the administrative law judge.

That question posed, is whether the claimant harassed or subjected Mr. Renaud or other employees to violence, when he attempted to assert his rights on September 5, 2020. The answer to that question is that he did not. Violence is commonly understood as the use of physical force against another person. There is not even an allegation in the record to support the notion the claimant ever used physical force on September 5, 2020 or any other date. The administrative law judge finds it quite Orwellian that an employee would be terminated under an anti-harassment policy for alleging he was discriminated against. While the claimant's allegations on September 5, 2020 may not be protected activity under Title VII or the Iowa Civil Rights Act due to the manner of his opposition, these allegations cannot be reasonably found to be misconduct. Since the claimant's behavior on September 5, 2020 is not misconduct, the employer did not terminate him for a current act. Benefits are granted.

DECISION:

The December 30, 2020, reference 01, unemployment insurance decision is reversed. The claimant was terminated for non-disqualifying conduct. Benefits are granted, provided he is otherwise eligible.



Sean M. Nelson
Administrative Law Judge
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July 30, 2021
Decision Dated and Mailed

smn/lj