

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMIEL CULPS
Claimant

RIVERBEND HOLDINGS LLC
Employer

APPEAL NO. 18A-UI-00473-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/15/17
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 January 9, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 5, 2018. Claimant participated personally. Employer participated by Teara Dowell. Employer's Exhibits 1-3 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 December 9, 2017. Employer discharged claimant on December 17, 2017, because claimant allegedly used the company credit card to purchase gas for his personal vehicle in violation of company policies.

Claimant and employer agreed that employer had spoken with all employees explaining that use of the company credit card for personal vehicles would lead to termination.

On December 5, 2017, at approximately 6:45 a.m. claimant was witnessed by a co-worker at the Casey's on West Avenue in Burlington, Iowa purchasing gasoline. Employer investigated this purchase and found that at the exact time claimant was purchasing gas, the company credit card was used for a \$50.01 gas purchase at the same Casey's.

Claimant and the co-worker agreed that there were no other employees at Casey's at the time in question and that claimant did have the ability to use the company credit card to make gas purchases for company vehicles.

Claimant stated that he did use cash to purchase \$5.00 in gas for his private vehicle at the time and Casey's in question. He denied use of the company card.

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*.

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).

The agency's decision must be supported by "substantial evidence in the record before the court when the record is viewed as a whole." Iowa Code § 17A.19(10)(f). "Substantial evidence" is what a reasonable mind would accept as adequate to reach a given conclusion, even if the reviewing court would have drawn a contrary inference from the evidence. *Cargill, Inc. v. Conley*, 620 N.W.2d 596 (Iowa 2000). The possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. *Westling v. Hormel Foods Corp.*, 810 N.W.2d 247 (Iowa 2012). Evidence is not substantial "when a reasonable mind would find the evidence inadequate to reach the conclusion reached by the agency." *Sahu v. Iowa Bd. Of Medical Examiners*, 537 N.W.2d 674 (Iowa 1995). In this matter, the court sees that evidence produced by the employer as being "substantial" in that employer has placed claimant at the business in question at the time and date where a company card was used. As claimant and the co-worker were the only parties in the area, and there are no allegations that the co-worker misused the company card, substantial evidence received shows that the card was used by the claimant.

In this matter, the evidence has established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning theft. The last incident, which brought about the discharge, constitutes misconduct because employer has shown through substantial evidence that claimant committed misconduct through theft by using the company credit card to get gas for his personal vehicle. 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 January 9, 2018, 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