

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONVONTE L DAVIS
Claimant

THOMPSON TRUCK & TRAILER INC
Employer

APPEAL 16A-UI-08498-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/17/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 1, 2016 (reference 01) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on August 23, 2016. The claimant, Donvonte L. Davis, participated personally and through witness Larry Parazine. The employer, Thompson Truck & Trailer Inc., participated through General Manager Bill Maahs.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production worker. This employer is a tire retreading plant. Claimant was employed from July 24, 2014 until July 18, 2016 when he was discharged from employment. Claimant's job duties involved inspecting and retreading tires. His direct supervisor was Royce Dague.

On July 15, 2016 claimant had clocked out and was waiting for his wife to pick him up from work. Another co-worker named Cody Bauer approached him and stated he needed to come back inside to clean and pick up various products. Mr. Bauer had been verbally abusive towards the claimant. The two went back inside. Mr. Bauer yelled and cursed at claimant and poked at him with his finger. Mr. Bauer then pulled scissors out of his pocket. The claimant then hit Mr. Bauer in the face when he saw the scissors. They both fell to the ground and claimant got up and left the premises. Claimant then called Mr. Maahs to report that he was in a fight with Mr. Bauer. The conversation was short.

Mr. Maahs asked claimant not to come back to work until he was notified to do so. Mr. Maahs reported to the claimant that the police had been called and claimant needed to speak to the police. Claimant did so. No charges were filed against the claimant.

Claimant visited with Mr. Maahs on Monday, July 18, 2016 about the incident. Mr. Maahs told claimant that he would be discharged if he did not resign. Claimant told Mr. Maahs about the scissors that Mr. Bauer had. Mr. Maahs had no other evidence except claimant's statement regarding the scissors. No videotape was taken inside the facility. Mr. Bauer denied that he pulled out scissors on claimant. Mr. Bauer carries scissors with him every day as part of his job duties. Claimant put in a resignation and the employer listed the separation as a resignation in their paperwork in order to benefit claimant's future job searches.

Claimant had no previous discipline during the course of his employment. Mr. Bauer was given a written discipline for his actions in verbally harassing claimant. Mr. Bauer is still employed with this employer. Mr. Bauer did not testify.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are allowed.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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 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.

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.

Further, 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). 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). Further, 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Employers do have an interest in protecting the safety of all of its employees and invitees. Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp't Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995). In this matter the claimant

was not the party that instigated the encounter as he had no fault in starting the fight and only struck Mr. Bauer when he pulled out his scissors; claimant believed that he had to strike Mr. Bauer because he could not turn his back to him to retreat when he pulled scissors out of his pocket and brandished a weapon. Claimant struck Mr. Bauer once and then he retreated to the door instead of continuing to engage in the physical altercation.

Claimant was simply acting in self-defense when he was attacked by Mr. Bauer and Mr. Bauer brandished a weapon at him. Peril would increase if claimant would have retreated because Mr. Bauer had a weapon and claimant could not turn his back. Claimant's actions were not an intentional and substantial disregard of the employer's interest which rises to the level of willful misconduct. As such, benefits are allowed.

DECISION:

The August 1, 2016 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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