

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN D QUIST
Claimant

HY-LINE NORTH AMERICA LLC
Employer

APPEAL 18A-UI-05367-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/15/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 1, 2018 (reference 01) unemployment insurance decision that found he was not eligible for benefits based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on May 29, 2018. The claimant, Brian D. Quist, participated personally. However, at approximately twenty-two minutes into the hearing the claimant's telephone disconnected. The administrative law judge telephoned the claimant back at the number he registered for the hearing; however, claimant did not answer. During the hearing, the claimant informed the administrative law judge that he had approximately twenty minutes left to use on his cellular telephone. The administrative law judge asked the claimant for an alternate telephone number to contact the claimant at and the claimant did not have an alternate telephone number to provide. The claimant did not ask for a postponement prior to the hearing. The claimant did not make arrangements with the local Iowa Workforce Development office in Spencer, Iowa to participate by telephone at that location. The employer, Hy-Line North America LLC, participated through witnesses Jill Hoffman and Clayton Sexton. Employer's Exhibits 1 and 2 were admitted.

ISSUES:

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 was employed full-time as a production worker at the employer's chicken hatchery. Claimant was employed from January 12, 2016 until November 15, 2017, when he was discharged from employment. Claimant's job duties included transferring eggs to packaging and cleaning packaging. Ms. Hoffman was claimant's immediate supervisor.

This employer has a written policy against insubordination and acts of aggression towards supervisors. The policy provides that an employee may be discharged for the first occurrence

of insubordination. The claimant received a copy of the employer's written policy regarding dischargeable offenses when he was first hired.

The final incident leading to discharge occurred on November 14, 2017. On this date, Ms. Hoffman observed the claimant drop and damage two boxes of eggs. After observing this, she moved claimant to a different position that would not require him moving boxes of eggs. Claimant became upset and yelled at Ms. Hoffman. Claimant stated, "You know I can't lift those eggs up. It will f**k my back up and you don't care. Why can't you understand." Exhibit 2. Then, after Ms. Hoffman told him that he did not have any restrictions for lifting eggs, he then replied, "What the he** you want me to do? Keep fu**c*ing my back up? Jeez." Exhibit 2. Then, after being told that he needed to leave for the day, claimant stated, "This is why this place sucks" to another supervisor. Exhibit 2.

Claimant had previous discipline for insubordination and disobedience on October 30, 2017. See Exhibit 1. The incident that led to the written warning occurred on October 27, 2017. During that incident, claimant had become aggressive with Ms. Hoffman while discussing work that needed to be done as part of his job duties. See Exhibit 1. The warning stated that a similar incident will result in termination. See Exhibit 1.

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 denied.

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.

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). 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).

This was not an incident of carelessness or poor work performance. Claimant intentionally became hostile, argumentative, and used profane language towards his supervisor. It is clear that claimant's actions were intentional and they were a substantial violation of the client's policies and procedures. Repeated conduct of aggressiveness with co-workers can be misconduct if done after repeated warning. *Greene v. Employment Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Accordingly, the employer has met its burden of proof in establishing that the claimant's conduct consisted of deliberate acts that constituted an intentional and substantial disregard of the employer's interests. These actions rise to the level of willful misconduct. As such, benefits are denied.

DECISION:

The May 1, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn