

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FRANCIS D KLINE
Claimant

CITY LAUNDERING CO
Employer

APPEAL 20A-UI-00217-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/08/19
Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Francis Kline (claimant) appealed a representative's December 30, 2019, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with City Laundering Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 28, 2020. The claimant participated personally. The employer participated by Nicole O'Brien, Human Resources Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 12, 2019, as a full-time production worker. The employer did not issue the claimant any warnings during his employment. Profanity and vulgarity were used commonly by supervisors and subordinates in the workplace.

The claimant signed for receipt of the employer's handbook on June 11, 2019. The handbook had a policy regarding hostile work environment. It read, "Exhibiting disorderly conduct such as using threatening intimidating or abusive language towards another person on company premises. A serious infraction could lead to disciplinary action up to and including dismissal."

The claimant complained twice to supervisors about a temporary worker who was yelling in the claimant's face at work. The claimant did not see any response from the employer about his complaints.

On December 4, 2019, the claimant was working in the wash room and had programmed the shuttle to run to the machine he was using. The temporary worker entered the wash room and reprogrammed the shuttle so that it would run to the machine the temporary employee was using. This caused items to be "knocked around". The claimant asked him, "What are you doing?" The temporary worker responded, "I know what the fuck I'm doing". The claimant said something about him being a temporary worker and there being a lot of information to learn. The claimant walked out of the wash room to complain to the supervisors.

The temporary worker came up behind the claimant and said, "You pussy bitch. You wanna go. I'll see you after work. I'll kill you". Other co-workers could see the verbal altercation but not hear the words. The claimant walked away and went to his supervisors. He complained again about the temporary employee and his threats. The claimant said, "I'm done". He walked away, went to the break room, and clocked out.

After cooling off, the claimant clocked back in and returned to work. The employer interviewed the workers. After the workers gave their information, the employer wrote out a statement for them. Approximately three hours later, the employer terminated the claimant for creating a hostile work environment. The temporary worker continues to perform services for the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but did not. The employer wrote statements; the witnesses did not create their own statements. Those statements were not provided as evidence for the hearing. The statements do not carry as much weight as live testimony because the testimony is under oath and the witness can be questioned.

The employer proved that the claimant was approached by the temporary worker. The two spoke loud words to each other. The content of the conversation was disputed as no one heard the conversation but the two employees. The claimant walked away from the temporary worker and complained about his life being threatened. The employer terminated the claimant.

The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's December 30, 2019, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs