

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBIN D CHAMBERLAIN
Claimant

APPEAL 15A-UI-13569-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOODWILL INDUSTRIES OF THE HEARTL
Employer

**OC: 11/15/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 8, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 31, 2015. Claimant participated. At the hearing, claimant asked to register Abbi Neipert, Amanda Dacey and Frank Lopez as witnesses. After being registered, the witnesses did not answer when contacted. Employer participated through Representative Mary Kating, Manager Store Leader Krystal Miller, and Assistant manager Lisa Wagner. Wendy Bucklin was registered as a witness on behalf of the employer, but did not participate.

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: Claimant was employed full time as a production clerk from May 24, 2011, and was separated from employment on November 2, 2015, when he was discharged.

Claimant was discharged on November 2, 2015 for misconduct. The employer has a written progressive disciplinary policy, which calls for a verbal warning, then a written warning, next a suspension, and then discharge.

On October 29, 2015, claimant was unstacking pallets by hand and not using a pallet jack or double stacker. Ms. Miller observed claimant doing this and told him not to do this, it was against safety procedures. Claimant was aware it was a safety violation. Ms. Miller told claimant to use the pallet jack. Claimant got mad and pushed the pallet back up on the stack and it slammed into the dock door. Ms. Wagner could hear claimant and Ms. Miller arguing and also heard a loud bang after claimant pushed the pallet back up onto the stack. Ms. Miller asked claimant to come into the office to speak privately. Claimant came into the office mumbling things along the way. Ms. Miller went over the safety practices with claimant. Claimant started getting

aggressive (claimant's tone was getting louder) and told Ms. Miller to just fire him. Ms. Miller and an assistant manager asked claimant to stop and claimant finally stopped.

Prior to October 29, 2015, claimant had received prior warnings for misconduct. On April 16, 2015, claimant was suspended for insubordination. During this incident, claimant had backed Ms. Miller into a corner because he was upset with the company about its policies. The conversation got heated and claimant did not like what Ms. Miller was saying. Claimant was suspended for one day. Ms. Miller told claimant his job was in jeopardy if any other incidents happened. On March 13, 2015, claimant was given a written warning for aggressive behavior. Claimant was yelling at Ms. Miller because he was bothered by some of the company policies.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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).

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). 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). 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 employer is entitled to establish reasonable work rules and expect employees to abide by them. On three separate occasions, claimant exhibited aggressive behavior with his manager, Ms. Miller. Claimant was given a written warning for yelling at Ms. Miller on March 13, 2015 and then suspended for one day on April 16, 2015 for getting in a heated argument and backing Ms. Miller into a corner. Claimant was warned that his job was in jeopardy if a further incident occurred. Then on October 29, 2015, claimant knowingly violated a safety procedure by removing a pallet from a stack by hand. When Ms. Miller caught claimant, he got mad and pushed the pallet back up on the stack causing it to slam against the dock door. Ms. Wagner could hear their raised voices and the crash into the door. Ms. Miller tried to go over the safety practices with claimant, but he got aggressive and his voice got louder. Both Ms. Miller and an assistant manager had to ask claimant to stop. Claimant got aggressive with Ms. Miller on October 29, 2015, despite having been suspended in April 2015 and warned his job was in jeopardy. Claimant's argument that everything stems from an incident where Ms. Miller said he put his hands on her is unpersuasive. Claimant admitted that he was never written up for putting his hands on Ms. Miller. Furthermore, Ms. Miller testified she never accused claimant of putting his hands on her.

The employer has presented substantial and credible evidence that claimant was insubordinate and aggressive towards Ms. Miller on October 29, 2015 after having been warned. This is disqualifying misconduct. Benefits are denied.

DECISION:

The December 8, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld

until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css