

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

JEFF S IDDINGS
Claimant

APPEAL NO. 18A-UI-10453-TN

**ADMINISTRATIVE LAW JUDGE
DECISION**

PANERA LLC
Employer

OC: 09/16/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jeff Iddings, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated October 15, 2018, reference 03, which denied unemployment benefits, finding the claimant was discharged from work on September 17, 2018, for insubordination in connection with his work. After due notice was provided, an in-person hearing was held in Sioux City, Iowa, on December 19, 2018. Claimant participated. Participating on behalf of the claimant was Mr. John Moeller, Attorney at Law. The employer participated by Ms. Cricket Liston, Manager. Employer's Exhibits 1 through 7 were admitted into the hearing record.

ISSUE:

The issue is whether the claimant was discharged for intentional disqualifying work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Jeff Iddings was employed by Panera LLC from November 16, 2016 until September 17, 2018, when he was discharged from employment. Mr. Iddings was employed as a full-time overnight baker and was paid by the hour. His immediate supervisor was Lisa Hull.

Mr. Iddings was discharged on September 17, 2018, because of an incident that had taken place on September 12, 2018, and because he had improperly provided notice to the employer of an impending absence on August 12, 2018, when he sent a text message to the employer two and a half hours before his work shift began instead of personally contacting a manager by telephone at least three hours before the shift began. Mr. Iddings was issued a written warning regarding the August 12, 2018 incident, however, the warning was not issued until September 5, 2018.

During the September 12, 2018 incident, Mr. Iddings terminated the telephone conversation with a manager, because he was extremely busy and the manager was not providing the necessary information which would allow him to answer the repeated inquiries. Mr. Iddings terminated the call by stating he did not have time to continue and disconnecting the call. He was reminded, a

few days before, of the company policy that requires employees to treat one another in a respectful and honest way. Mr. Iddings was also verbally counseled on a number of occasions to remain calm and not be agitated or unprofessional in his dealings with fellow employees.

At the time of his discharge, Mr. Iddings continued to be under a doctor's light duty limitation, which limited his lifting and the number of hours he could work each night. Mr. Iddings denies being intentionally insubordinate and maintains that he terminated the telephone conversation because of other pressing work obligations and the caller's inability to provide information that would have allowed the matter to be resolved.

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 was 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).

The employer bears the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate,

intentional or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the claimant was discharged for two incidents. One incident took place five weeks before the claimant's discharge. The employer waited three weeks before issuing the claimant a warning about the way that he reported an absence on August 12, 2018. During the final incident, the claimant, who appears to be rather high-strung by nature, acted in an abrupt manner with a manager who called seeking information during a very busy time during the claimant's night-time work shift. After repeatedly trying to obtain information necessary to resolve the reason for the call and being unable to obtain that information, the claimant briefly explained that he did not have time to continue and then disconnected from the call.

In hindsight, it is clear that the claimant could have chosen a more polite and acceptable way to convey that information and end the call. However, under the circumstances at the time, the claimant's response did not rise to the level of intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits.

In this case, the employer made a management decision to terminate Mr. Iddings from his employment. The question before the administrative law judge in this case is not whether the employer made a correct decision in terminating the claimant, but whether the claimant is eligible to receive unemployment insurance benefits. While the decision to terminate Mr. Iddings may have been a sound decision from a management viewpoint, the administrative law judge concludes, based upon the evidence in the record, that the claimant's conduct is more accurately categorized as an incident of poor judgement made under stressful circumstances. While the propriety of employer's decision is not questioned, the administrative law judge concludes that the claimant's conduct did not rise to the level of intentional disqualifying misconduct sufficient to warrant the denial of job insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 15, 2018, reference 03, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed provided the claimant meets all other eligibility requirements of Iowa law.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs