IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ADAM THOMPSON Claimant **ERIK'S BIKE SHOP INC** Employer	**APPEAL 20A-UI-15690-S1-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/16/20** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Adam Thompson (claimant) appealed a representative's November 6, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Erik's Bike Shop (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2021. The claimant participated personally. The employer participated by Tanner Kading, Store Manager; Craig Stoeltzing, Market Leader; Douglas Holtz, Human Resources Manager; and Ross Hackerson, Assistant Store Manager.

The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include 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 May 9, 2018, as a full-time assistant manager. He received the employer's handbook when he was hired. The employer is unaware of any policy in the handbook regarding off-duty conduct. It never warned the claimant of termination.

On July 10, 2020, the employer issued a written warning for inappropriate conduct after a customer complained. The claimant was having a bad day and did not help the customer load his bike. The employer did not warn the claimant of any future consequences.

On August 18, 2020, the claimant's day off, he posted a comment on the Simpson College Running Forum about a student athlete. The claimant said he thought the athlete was not talented. The claimant did not post with the intent to harm the employer. The mother of the athlete found the claimant on Facebook and discovered he worked for the employer. She

posted that the employee was “belittling children”. On August 19, 2020, the employer terminated the claimant for his post.

The claimant filed for unemployment insurance benefits with an effective date of August 16, 2020. His weekly benefit amount was determined to be $559.00. The claimant received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after August 16, 2020.

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). Off duty conduct must be "work related" if it is to be grounds for discharge and disqualification for misconduct. That is, it must have a direct, negative effect on the employer. *Diggs v. Employment Appeal Board*, 478 N.W.2d 432 (Iowa App. 1991). In order for an employer to show that is employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence:

> [T]hat the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest, and (3) was in fact conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer.

Dray v. Director, 930 S.W.2d 390 (Ark. App 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988), quoting *Nelson v. Department of Employment Security*, 655 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§77–78.

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). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. In as much as the employer had not previously warned the claimant about consequences for inappropriate conduct, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

For there to be misconduct the first thing the employer must show is a connection between the conduct and work. There is a connection between the claimant's behavior on August 18, 2020, and the mother's post. His behavior may have had an impact at the company. In this case, the employer showed some negative comments from the one person, who was not identified as a customer. Secondly, the employer must show harm. The employer did not provide any indication of how it was harmed, other than the posting.

Finally, the employer must show the claimant violated a policy and he did so with the intent or knowledge that the employer would be harmed. The employer offered no evidence that its handbook contains a policy regarding off duty conduct or that it informs employees of the consequences for such action.

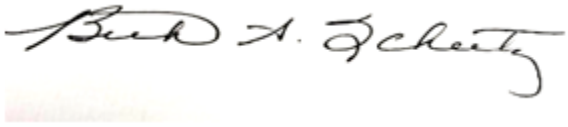
It provided no evidence that the claimant knew his actions would result in any harm to the employer. Many people comment about the talent of professional, college, and high school athletes. When a person engages in a sport, the person (and the person's family) should

expect comments about the person's talent. The claimant engaged in an online conversation about the talent of an athlete. The conversation does not rise to the level of misconduct.

The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The representative's November 6, 2020, 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

February 12, 2021
Decision Dated and Mailed

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