

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID HALL
Claimant

WELLS ENTERPRISES INC
Employer

APPEAL 19A-UI-08429-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/06/19
Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

On October 28, 2019, David Hall (claimant) filed an appeal from the October 24, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination he failed to provide evidence to show he voluntarily quit employment with good cause attributable to Wells Enterprises, Inc. (employer). The parties were properly notified about the hearing. A telephone hearing was held on November 18, 2019. The claimant participated personally. The employer participated through Mac McCallister, Creative Manager, and Stormie Westphal, HR Business Partner, and was represented by Jackie Boudreaux, ADP Hearing Rep. The employer's Exhibits 1 through 7 were admitted into the record.

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: The claimant was employed full-time as a Senior Designer beginning on May 4, 2015, and was separated from employment on October 10, 2019, when he was discharged. The claimant was responsible for designing artwork on packaging for the employer's products. In June 2016, the claimant was placed on a Performance Improvement Plan (PIP) based on packaging errors he had made in May and June. He was advised to focus more on his work and own his mistakes. In April 2018, the claimant entered into a partnership to start a freelance design business and continued to work for the employer.

On February 26 and 27, 2019, the claimant made errors and, when he realized it, he deleted the workflow file. Mac McCallister, Creative Manager, met with the claimant about the issue. During their meeting, the claimant told McCallister, "...[H]e will just wait to be fired and collect unemployment." (Exhibit 3) Jamee Carlson, Senior Director Product Commercialization, also met with the claimant to discuss the seriousness of the deleting the file. The claimant told her that he would accept whatever punishment they determined was appropriate. He also shared his frustrations with the way projects were managed.

On May 9, McCallister had a meeting with the claimant regarding conflicts of interests and the claimant using company time to work on his side business. The two had prior conversations about the issue, but it had become a more significant problem. McCallister advised the claimant that no outside work was allowed on company time and the claimant needed to remain focused on his job.

In August, the claimant was assigned to a high-profile, time-sensitive project. The employer believed the project had gone well, until the internal customer came back and informed them the final product was not what had been approved. McCallister discovered the error was made when the claimant created an image box, which he considered a “rookie mistake.” (Exhibit 7) McCallister asked the claimant to show him how to create a new image box and the claimant was able complete the task perfectly.

In September, the claimant had more errors on a two-week project. On September 29, the claimant sent a text message to McCallister stating, “I’m defeated...maybe just let me go? I can get unemployment look for a new job.” (Exhibit 4) McCallister responded that the claimant just needed to pay attention to his work and stay focused. The claimant responded stating, “Not trying to poor me. Just this is not my gig..you need a different person in here I’m just not your guy for this.” (Exhibit 4)

On September 30, the claimant and McCallister met to discuss the claimant’s continued errors. McCallister again observed that the claimant seemed distracted by outside work and phone calls. He reiterated the claimant needed to pay attention and focus on his work. McCallister stated after four years of performing the same tasks, these errors should not be occurring. He told the claimant he did not know what else to do to assist him, the claimant just needed to start restoring trust by doing things correctly. McCallister also told the claimant if he was not happy, then he should look for a new job where he can find happiness. The claimant said no and then stated, “I’m staying until you fire me.” (Exhibit 4)

The claimant then had work product rejected by the internal customers on October 8 and October 10. The first was due to the type being doubled up and gradient issues. McCallister noted that he had seen the claimant on his phone constantly and did not know how to help him any longer. The second and final incident occurred on October 10, when the claimant put the words “ice cream” in a logo for a novelty product that was to be labeled “frozen dairy treat.” The employer decided it could no longer work with the claimant’s continued errors and he was discharged.

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.

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.

...

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

This definition of misconduct 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). 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 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). Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

It is the duty of the administrative law judge as 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 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. *Id.* 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 believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The claimant contends he was working his best of ability and was unable to meet the employer's standards. However, the claimant's argument is not persuasive. The claimant made multiple statements to the employer that he was at work waiting to be discharged. Additionally, when McCallister had him sit down to go through a process, the claimant demonstrated he had the ability to perform the process perfectly.

The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The claimant knew that his job performance was unsatisfactory and he needed to improve. The claimant made multiple comments to the employer about being discharged or waiting to be discharged which indicates a wrongful intent in the mistakes that he made. The claimant's repeated carelessness and negligence in his job performance constitutes disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The October 24, 2019, reference 01, unemployment insurance decision is modified with no change in effect. 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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