

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZACH FLICK
Claimant

FAWN MANUFACTURING INC
Employer

APPEAL 20A-UI-09060-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

Fawn Manufacturing (employer) appealed a representative's July 23, 2020, decision (reference 01) that concluded Zach Flick (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 16, 2020. The claimant participated personally. The employer participated by Lane Henry, Human Resources Generalist. The administrative law judge took official notice of the administrative file.

ISSUES:

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, which party should be charged for those benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

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 December 12, 2018, as a full-time overhead welder. The employer has a handbook but the claimant did not receive a copy of it. The employer did not issue the claimant any warnings during his employment. It commended his service to the company.

On March 4, 2019, the employer terminated the claimant for theft of a sandwich. It did not know the owner of the sandwich, what time the sandwich was taken, or where the sandwich was taken from. The claimant denied taking a sandwich.

The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. His weekly benefit amount was determined to be \$156.00. The department did not schedule a fact-finding interview. It interviewed the parties informally.

The claimant received benefits from March 29, 2020, to the week ending September 5, 2020. This is a total of \$3,497.00 in state unemployment insurance benefits after the separation from employment. He received \$1,872.00 in Pandemic Emergency Unemployment Compensation. He also received \$10,200.00 in Federal Pandemic Unemployment Compensation for the seventeen-week period ending July 25, 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).

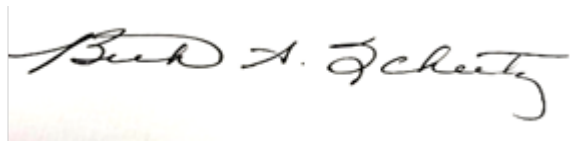
Iowa Admin. Code r. 871-24.32(4) provides:

(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). 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). The employer did not provide any information regarding misconduct at the hearing and, therefore, provided no evidence of job-related misconduct. 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 July 23, 2020, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

September 17, 2020
Decision Dated and Mailed

bas/scn