

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SIDNEY A HILL
Claimant

WINNEBAGO INDUSTRIES
Employer

APPEAL 18A-UI-09072-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/22/18
Claimant: Appellant (1)**

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin Code r. 871-24.32 – Discharge for Misconduct

STATEMENT OF THE CASE:

Sidney Hill, Claimant, filed an appeal from the August 15, 2018, (reference 01) unemployment insurance decision that denied benefits because he was discharged from work with Winnebago Industries for failing to do satisfactory work even though he was capable. The parties were properly notified of the hearing. A telephone hearing was held on September 18, 2018 at 1:00 p.m. Claimant participated. Employer participated through Susan Gardner, Human Resources Supervisor, and David Holmes, Production Supervisor. Employer's Exhibits 1 through 7 were admitted.

ISSUE:

Whether Claimant's separation was a discharge 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 laborer from May 14, 2012 until his employment ended on April 11, 2018. (Holmes Testimony) Claimant worked Monday through Friday from 6:00 a.m. until 3:30 p.m. (Holmes Testimony) Claimant's direct supervisor was David Holmes. (Holmes Testimony)

Employer has an employee handbook that states: "misconduct may result in disciplinary action ranging from reprimand to discharge." (Exhibit 1) The handbook lists examples of misconduct, which includes "failure to exert normal effort on the job, wasting time, loitering, loafing, excessive visiting, or sleeping on the job." (Exhibit 1) Claimant received a copy of the handbook. (Claimant Testimony; Exhibit 2)

Claimant received a verbal warning on April 10, 2017 for failure to exert normal effort on the job. (Exhibit 3) Claimant was failing to keep up with his work on the assembly line, resulting in the line being shut off. (Exhibit 3). On May 11, 2017, Claimant received a written warning for failure to exert normal effort on the job, wasting time, loitering, loafing, excessive visiting or sleeping on

the job. (Exhibit 4) While the line was down for a few minutes, claimant talked to a co-worker instead of doing other tasks like sweeping or glazing. (Exhibit 4) When the line restarted, claimant was not at his designated work space, which resulted in work not being completed. (Exhibit 4) On October 5, 2017, claimant received a two-day suspension for failure to exert normal effort on the job, because he walked away from his work space on the assembly line, leaving other employees to do his job. (Exhibit 5) The warning states that "further violations may result in further disciplinary action including termination." (Exhibit 5) On March 16, 2018, claimant received another warning regarding lack of effort in performing his job. (Exhibit 6) Claimant was not keeping up with production in the glazing area and not remaining in his designated work space. (Exhibit 6) This warning also states that "failure to do so may result in further disciplinary action including termination." (Exhibit 6)

On April 11, 2018, claimant arrived at his designated work space on the assembly line late because he had to retrieve his safety goggles from another work station. (Holmes Testimony; Claimant Testimony) By being late to his work space after the assembly line had started, parts that claimant was to unload had already passed his work space on the line. (Exhibit 7) Claimant was terminated from his employment on April 11, 2018. (Holmes Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying, work-related misconduct. Benefits are denied.

Iowa Code section 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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Further, 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). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Claimant's actions were not the result of inefficiency, inadvertence or ordinary neglect; claimant was able to perform his job but on multiple occasions chose to leave his work space, arrive late to his work space and exert less than normal effort in performing his job. Claimant's actions constitute a willful and wanton disregard for his employer's interest. When working on an assembly line, one employee's actions affect other employees' job performance and work product. Claimant knew that his conduct negatively affected his co-workers' performance and productivity. Claimant was warned about this very conduct on 4 occasions before his termination. Claimant knew that his conduct violated company policy and would result in termination of his employment.

Claimant was discharged due to disqualifying, job-related misconduct. Benefits are denied.

DECISION:

The August 15, 2018, (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and had been paid wages for insured work equal to ten times his weekly benefit amount.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs