

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICKY O'CONNOR
Claimant

TOTAL DETAILING AUTO SPA LLC
Employer

APPEAL 19A-UI-05726-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/23/19
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ricky O'Conner (claimant) appealed a representative's July 16, 2019, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after the claimant's separation from work with Total Detailing Auto Spa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2019. The claimant participated personally and through Michele Williams, his mother, and Daniel Walters, former co-worker. The employer participated by Tim Lofgren, Owner/Manager, and Tanner Mueller, Detail Manager. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is 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 November 10, 2018, as a full-time detailer for a second period of employment and received the employer's handbook. The handbook had a section on Workplace Harassment. That section stated that the employer "does not tolerate any verbal or physical conduct by an employee which harasses, disrupts, or interferes with another's work performance or which creates an intimidating, offensive or hostile environment...".

The employer wrote Disciplinary Notices on a form but never gave employees a copy of the document. The employer only verbally talked through the infraction with the employee. On December 8, 2018, a customer's vehicle came into the shop. The claimant acknowledged receipt of the vehicle and all the employees could see the vehicle. The claimant was unable to start working on the vehicle immediately because he was working on another customer's car. On December 8, 2018, the claimant signed a disciplinary notice for "disregard for customer service and communication" when he did not tell the other employees that the vehicle was there.

On January 18, 2019, the claimant asked his supervisor if he could leave work early because of the work environment caused by a co-worker. His supervisor gave him permission to leave. On January 19, 2019, the employer issued the claimant a disciplinary notice for leaving early. On May 22, 2019, the employer gave the claimant a disciplinary notice for not wearing black pants in compliance with the dress code. The claimant had a washing malfunction.

In May 2019, the claimant explained to the employer about his changing visitation schedule with his son in Chicago, Illinois. The claimant said he would need Saturday, June 8, 2019, and Saturday, June 15, 2019, off. The employer told the claimant it would try to work with him. The claimant continued to talk to the employer about his schedule. On June 4, 2019, the claimant gave the employer a document with his revised work schedule for those two Saturdays. The employer told the claimant it could not give him Saturday, June 8, 2019, off. The claimant said he had made arrangements and his child's mother was counting on him. The employer refused to change. The claimant was unable to work on Saturday, June 8, 2019. Sometime after June 8, 2019, the employer issued the claimant a disciplinary notice for his absence.

There were problems with workers not refilling bottles of product. The employer mentioned it to employees but the problem persisted. On June 17, 2019, the claimant posted a sign that read, "Go fill your own damn bottles! Stop being lazy! I'll be checkn (sic) camera. ROC" The employer saw the sign on June 17, 2019, and did not investigate. It terminated the claimant on June 21, 2019.

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 Code § 96.4(1) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

1. The individual has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the department may prescribe. The provisions of this subsection shall be waived if the individual is deemed temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c".

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). The employer discharged the claimant and has the burden of proof to show misconduct. 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 this case, the claimant made a good faith error in judgment when he posted the sign. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's July 16, 2019, 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

Decision Dated and Mailed

bas/scn