

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DREW E. SHAW
Claimant

DICK'S SPORTING GOODS, INC.
Employer

APPEAL 20A-UI-08434-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (2R)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause
Iowa Code section 96.5(2)(a) – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(1)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Drew E. Shaw appealed the July 15, 2020 (reference 01) unemployment insurance decision that denied benefits. The agency properly notified the parties of the hearing. The undersigned presided over a telephone hearing on August 28, 2020. Shaw participated personally and testified. Dick's Sporting Goods, Inc. (Dick's) did not participate.

ISSUES:

Was Shaw's separation from employment with Dick's a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?
Did Dick's discharge Shaw for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts. Dick's hired Shaw on or about June 27, 2017. Shaw worked full time as a cashier. Dick's discharged Shaw on May 8, 2020.

In Mid-February of 2020, a customer did not like how an item had been charged. The customer asked Shaw for help. Shaw requested help from a coworker and instructed the coworker to cancel the transaction like it had never happened.

Apparently there was a miscommunication. The coworker did not do as Shaw had requested. The result was that the drawer total was short for the register Shaw was working that day.

Dick's questioned Shaw about what happened. Dick's issued Shaw a written reprimand for the incident. The reprimand informed Shaw that she could be discharged for any additional conduct in violation of Dick's policies and procedures.

When Shaw began work at Dick's she received little training. Instead, Dick's management told her to ask for help. Shaw was instructed to staple a check to the receipt after it went through. In early May of 2020, a customer's check did not go through. Shaw stapled the check to the receipt, thinking this was the proper procedure to follow.

A few days later, Dick's management approached Shaw about the incident. They questioned her. Apparently Shaw was supposed to keep the check because it did not go through under Dick's policies and procedures. Shaw did not know this at least in part because Dick's had provided her no training on it.

On May 8, 2020, Dick's informed Shaw that she was discharged because of the February incident and the check incident.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes discharged Shaw from employment for no disqualifying reason.

In appeals such as this one, 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). Under Iowa Code section 96.5(2)(a), an individual is disqualified for benefits if the employer discharges the individual for misconduct in connection with the individual's employment. The statute does not define "misconduct." But Iowa Administrative Code rule 871-24.32(1)(a) does:

"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.

The Iowa Supreme Court has ruled this definition accurately reflects the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). 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).

The employer has the burden of proof in establishing disqualifying job misconduct. See, e.g., *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Under Iowa Administrative Code rule 871-24.32(a):

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 record shows that Shaw asked for help at her register in February and her coworker did something incorrect. Her coworker's mistake led to Shaw's drawer being short. It is of course an employer's prerogative to hold the cashier assigned to a register responsible for any discrepancies in the register's funds relative to items sold. However, such a policy is not dispositive when it comes to determining misconduct under chapter 96. In the current case, there is no indication Shaw did anything but ask for help from a coworker. The coworker's error directly led to the register discrepancy that triggered Shaw's written reprimand. No act by Shaw directly caused the issue.

Shaw acted in good faith when she stapled the check that did not go through in May to the customer's receipt. Based on Shaw's experience, she believed that she was supposed to staple customer checks to their receipts. Dick's provided her no training on what to do when a customer's check does not go through. Shaw thought she was acting in accordance with Dick's policies and procedures.

Neither one of these incidents constitutes misconduct under chapter 96. Shaw acted in good faith on both occasions. Dick's failing to provide sufficient training contributed to the misunderstanding. Simply put, Shaw did not willfully violate or disregard a standard of behavior Dick's has for its employees. There is not enough evidence to conclude Shaw acted in a way that rises to the level of misconduct under rule 871-24.32(1)(a).

For these reasons, Dick's discharged Shaw on May 8, 2020, for no disqualifying reason. Shaw is therefore entitled to benefits under Iowa Code section 96.5(2)(a) and rule 871-24.32(1)(a). Benefits are allowed.

The evidence in this case shows that the date of discharge in the July 15, 2020 (reference 01) decision of April 5, 2020, is incorrect. Dick's placed Shaw on a mandatory furlough that day. Therefore, Shaw's claim is remanded to the Benefits Bureau to determine if Shaw is entitled to benefits before her date of discharge, May 8, 2020, due to the furlough.

DECISION:

The July 15, 2020 (reference 01) unemployment insurance decision is reversed. Dick's discharged Shaw from employment on May 8, 2020, for no disqualifying reason. Benefits are allowed, provided Shaw is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. Further, Shaw's claim is remanded to the Benefits Bureau to determine if Shaw is entitled to benefits before her date of discharge, May 8, 2020, due to the furlough.

A handwritten signature in black ink, appearing to read "Ben Humphrey", with a stylized flourish extending from the end.

Ben Humphrey
Administrative Law Judge

August 31, 2020
Decision Dated and Mailed

bh/scn