

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAUL GONZALES
Claimant

APPEAL 21A-UI-16614-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

HOLT SALES AND SERVICE INC
Employer

OC: 04/25/21
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed an appeal from the July 19, 2021, (reference 01) unemployment insurance decision that granted benefits based upon the conclusion he was discharged, but work-related misconduct was not shown. The parties were properly notified of the hearing. A telephone hearing was held on July 20, 2021. The claimant participated. The employer participated through Supervisor Zach Wahlert. The employer was represented by Unemployment Insurance Hearing Representative Tom Kuiper. Official notice was taken of the administrative file. No exhibits were received into the record.

ISSUES:

Whether the claimant was separated from employment for work-related misconduct?
Whether the claimant was overpaid for benefits? Whether he is excused from repaying those benefits due to the employer's non-participation at fact-finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed as a full-time prefabrication laser operator from May 27, 2016, until this employment ended on April 27, 2021, when he was discharged. The claimant worked the second shift from 2:00 p.m. to 10:00 p.m. Monday through Friday.

The employer has an alcohol and drug free workplace policy. The policy forbids the consumption, sale, and distribution of alcohol or illegal drugs on its premises. It states that an employee can be terminated after a single infraction of this policy.

On April 26, 2021, Montre Reed, a lead welder, informed Manager Jeremy Drever that the claimant was selling cocaine at the employer's business. That same day, Mr. Drever spoke with

two welders, Dana Bennett and Danny Spooner, who also alleged the claimant had been selling cocaine while at work. These employees wrote statements generally alleging the claimant sold drugs while at work. The statements did not provide descriptions of specific incidents. These statements were not provided by the employer. Neither Mr. Wahlert nor Mr. Kuiper knew why these witnesses were not testifying on behalf of the employer in the hearing. The claimant confirmed he worked in the same building as these employees. He was not aware of any motive Ms. Bennett, Mr. Spooner or Mr. Reed had in making these allegations.

On April 27, 2021, Mr. Drever decided Ms. Bennett, Mr. Spooner and Mr. Reed's allegations were credible. Mr. Drever did not interview the claimant regarding the allegations. Mr. Wahlert did not know why Mr. Drever found these witnesses to be credible. Mr. Drever was not made available to testify for the employer. Neither Mr. Wahlert nor Mr. Kuiper knew why Mr. Drever was not testifying that day.

On April 27, 2021, Mr. Wahlert terminated the claimant. The claimant was not aware of the allegations being brought against him. Nor was he permitted to admit or deny the specific allegations. The claimant did not sell drugs on the property as alleged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. The issues regarding whether the claimant was overpaid regular unemployment insurance and FPUC benefits are moot.

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 individual shall be disqualified for benefits 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.

871 IAC 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 Department of Job Service*, 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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 decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

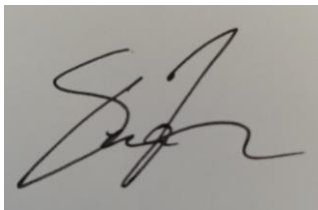
After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events.

The administrative law judge finds the claimant more credible regarding whether he did sell drugs as alleged. He does so because the employer has not provided the witnesses who accused the claimant of this conduct. It did not even provide the written statements it concedes exists. According to Mr. Wahlert, the statements given did not have any specificity regarding instances of selling drugs on the employer's property. The employer also did not register Mr. Drever as a witness, the person who weighed the credibility of these witnesses prior to terminating the claimant. Furthermore, Mr. Drever did not appear to weigh the credibility of the claimant prior to making his decision to terminate him.

For all of these reasons, the employer has failed to meet its burden showing the claimant engaged in disqualifying misconduct. Benefits are granted. Since benefits are granted, the issues regarding whether the claimant was overpaid regular unemployment insurance and FPUC benefits is moot.

DECISION:

The July 19, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Since benefits are granted, the issues regarding whether the claimant was overpaid regular unemployment insurance and FPUC benefits is moot. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Sean M. Nelson
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September 29, 2021
Decision Dated and Mailed

smn/mh