IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CRAIG WHITAKER Claimant **BERTCH CABINET MFG INC** Employer	**DIA APPEAL NO. 21IWDUI0188** **IWD APPEAL NO. 20A-UI-15182** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 9/20/2020** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant, Craig Whitaker, filed an appeal from the November 13, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination he had been discharged "from work on 09/20/20 for falsifying your application for hire." After proper notice, a telephone hearing commenced on January 21, 2021. Claimant appeared and testified. Nobody appeared for Employer. Claimant submitted one exhibit—a letter of termination from Employer—which was admitted into the record.

ISSUE(S):

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

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

Claimant Craig Whitaker was hired in the production area of Bertch Cabinet on December 3, 2018. He worked there full time, but his schedule varied. On the evening of October 18, 2019, Claimant fell at home and injured his knee. A doctor took him off work because of that injury and Claimant provided that note to Bertch. Consequently, October 18, 2019, was to be his last day of work at Bertch. Over the course of the next month Claimant did receive some calls from his supervisor to check on him, and claimant did turn in to Bertch some doctor's progress notes. His intention and expectation during this time was to return to work at Bertch when he was able. However, at this time he had not been released to return to work by his doctor.

Then, on November 27, 2019, Bertch's HR Director sent Claimant a note indicating that effective that day he was terminated from his position. Specifically, the letter stated:

> The reason you are terminated is because you have been off work due to illness since 18 October 2019, and you have no known return-to-work date. You have stated there is no prognosis for your recovery, and your next appointment is not

> until 17 December. In addition, you are not covered under FMLA, thus, we have filled your position.
>
> Most recently, you have been off work on Short-Term Disability (STD) since 18 October 20-19 and are presently still on STD with no known return-to-work date. The maximum period of time for any STD claim is 20 weeks, and your 20-week period will elapse approximately 05 March 2020. Since there is no known date of release from STD, we would presume you will continue to receive STD checks through that period of time.

Claimant eventually received a work release from his doctor toward the end of December 2019. Following that date, he was looking for other employment, but due to Covid and other factors, he has been unable to find work. So, eventually, on September 20, 2020, claimant filed for unemployment.

Pursuant to that unemployment application, claimant later had a phone interview with an IWD representative. No representative from Bertch appeared for that interview. At that fact-finding interview, Claimant reported his situation as noted above. Then, on November 13, 2020, the IWD representative filed its decision, denying Claimant benefits. In pertinent part, that decision stated as follows:

> Our records indicate you were discharged from work on 09/20/20, for falsifying your application for hire. This is considered misconduct since it could result in legal liabilities or penalties for the employer.

When he received this decision in the mail, Claimant was quite surprised and confused, because he knew that he had not been terminated for falsifying anything. Rather, he had been terminated due to his physical inability to return to work. Claimant tried to call IWD several times to report his belief that the IWD representative had mistaken him for somebody else, but he was told he had to follow the appeal process. Accordingly, this hearing was held before the undersigned on January 21, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the IWD representative's decision of November 13, 2020, is incorrect. Claimant was not discharged for misconduct. Rather, he was discharged following his injury which necessitated an extended inability to work. Claimant was thus discharged from employment for no disqualifying reason.

Iowa Code § 96.5(2)a provides:

> An individual shall be disqualified for benefits . . .
>
> 1. Voluntary quitting**.** If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. . . .
>
> 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.

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(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.

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). 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. 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). 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.

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 focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor

work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). 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)(fact that claimant, who was a snowplower, had two accidents involving utility lines within three days did not constitute misconduct such as would disqualify claimant from receiving unemployment benefits; there was no evidence that claimant intentionally or deliberately damaged utility lines or violated any traffic laws, and there was uncontroverted evidence that accidents were beyond claimant's control).

I cannot conclude that the Employer has met its burden to establish that Claimant was terminated for misconduct. Rather, the best evidence in this record—indeed, the only evidence—is that Claimant was terminated based on his inability to return to work following his at-home knee injury. That fact is substantiated by Employer's November 27, 2029, letter to Claimant informing him of such. The fact finding decision is therefore incorrect.

For all of these reasons, I conclude there was no disqualifying misconduct alleged here. IWD's decision to the contrary must be REVERSED. Because he had not received medical clearance to return to work at the time of his termination, Claimant would not have been able and available to work at that time. However, he was released by his doctor in late-December 2019. He was thus able and available to work as of the time he applied for benefits in September 2020. As Claimant was able and available for work by the week he applied for unemployment, he should be eligible as of that date.

DECISION:

The November 13, 2020 (reference 01) unemployment insurance decision is REVERSED. Claimant is eligible to receive benefits. Any benefits claimed and withheld on this basis shall be paid.

David Lindgren
Administrative Law Judge

1/29/2021
Decision Dated and Mailed

Cc: Craig Whitaker, Claimant (By mail)
Bertch Cabinet, Employer (By mail)
Nicole Merrill, IWD (By email)
Joni Benson, IWD (By email)