

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

JOSEPH F TAKES
Claimant

APPEAL NO. 18A-UI-04177-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ATC INC
Employer

OC: 03/11/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

ATC (employer) appealed a representative's March 28, 2018, decision (reference 3) that concluded Joseph Takes (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 27, 2018. The claimant participated personally. The employer participated by Brittany Philipp, Human Resources Manager. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 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 June 26, 2017, as a full-time wash bay associate. He signed for receipt of the employer's handbook on June 26, 2017. On November 21, 2017, the employer talked to the claimant and others about job expectations. The employer completed a Disciplinary Notice to Employee form on November 21, 2017, but the claimant did not know of its existence. On February 27, 2018, the employer issued the claimant a Disciplinary Notice to Employee regarding absenteeism. The employer did not warn the claimant of termination.

On March 6, 2018, the claimant was performing his assigned job duties and taking cardboard outside. His lead technician saw the claimant take the cardboard outside. It was well before the end of his shift and the claimant had plenty of time to empty all six garbage cans. The service rider told the employer that he could not find the claimant. The employer decided that if there were any garbage cans that had not been emptied, the claimant should be sent home. The employer found one and sent the claimant home early. On March 8, 2018, the employer issued the claimant a Disciplinary Notice to Employee for "lack of production and failing to follow instruction". The employer did not warn the claimant of termination.

Before the claimant left work on March 8, 2018, the claimant asked his lead technician to check the service bay to make certain it was clean and in order. The lead technician told the claimant he had performed all his tasks in the service bay and the claimant left work. On March 9, 2018, the claimant arrived at work and the employer terminated him for not securing hoses and wands in the service bay. The employer said the claimant's actions caused damage to a wand.

The claimant filed for unemployment insurance benefits with an effective date of March 11, 2018. The employer participated personally at the fact finding interview on March 27, 2018, by Morgan Philipp.

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).

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). 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.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's March 28, 2018, decision (reference 03) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs