

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHEN D SMART
Claimant

PEDCOR MANAGEMENT CORP
Employer

APPEAL 16A-UI-02989-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/31/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 1, 2016, (reference 04) unemployment insurance decision that denied benefits based upon his discharge. The parties were properly notified of the hearing. A telephone hearing was held on March 30, 2016. The claimant Stephen Smart participated and testified. The employer Pedcor Management Corp. participated through property manager, Amanda Crosby. Claimant's Exhibits A, B, and D were received into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a maintenance supervisor from February 6, 2015, until this employment ended on January 27, 2016, when he was discharged.

On January 7, 2016, claimant was given a written warning for various issues related to his performance. (Exhibit A). These issues included a disregard of direction from supervisors, poor time management, and generally using his time inefficiently. The warning gave several specific examples of situations where claimant engaged in such behavior. The warning advised that failure to immediately improve would result in termination. Claimant's performance was not discussed with him again until January 27, 2016. On January 27, claimant met with Crosby and his immediate supervisor, Andy Elwood. Claimant was informed during the meeting that he was being terminated for failure to improve on the issues cited in his termination notice. The decision to terminate claimant's employment was actually made by regional manager Lisa Armato, but she was not present for the termination meeting. Crosby was not sure of any specific behavior claimant had engaged in between January 7 and 27 that would lead to his termination, just that he had generally failed to improve. Claimant testified that he believed his performance was very good during this time and was unsure where Armato believed he had fallen short.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

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).

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.

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.

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.

Inasmuch as the employer had warned claimant about his performance on January 7, 2016 and could not identify any incidents of alleged misconduct thereafter, it has not met the burden of proof to establish that claimant acted deliberately or negligently after the most recent warning. The employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Furthermore, given the lack of evidence, the employer failed to establish misconduct even were it current. Accordingly, benefits are allowed.

DECISION:

The March 1, 2016, (reference 04) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/css