

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHAD M CRIBARI
Claimant

JELD-WEN INC
Employer

APPEAL 19A-UI-08288-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/29/19
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the October 17, 2019 (reference 01) unemployment insurance decision that found the claimant was eligible for unemployment insurance benefits based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on November 13, 2019. The claimant, Chad M. Cribari, participated personally and was represented by Attorney Eric Eshelman. The employer, Jeld-Wen Inc., participated through witnesses Bill O'Dell and Mark Shaw. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed from March 25, 2019 until September 27, 2019. His job title was group manager and he was in charge of a crew that handled door manufacturing. Claimant's immediate supervisor was Travis Smith.

On or about the week of September 15, 2019, the Des Moines Police Department contacted Mr. O'Dell concerning two automated strappers that were sold at two different pawn shops. One of the two tools was identified as belonging to the employer by matching the serial number on the tool. The Des Moines Police Department informed Mr. O'Dell that the claimant was identified as the person who had sold the two tools to the pawn shops.

On September 23, 2019, Mr. O'Dell asked the claimant if he knew anything about tools that had been missing from his department or the employer. Mr. O'Dell did not identify the type of tools

that he was referring to in this conversation. Claimant stated that he did not know anything about missing tools from the employer. Claimant was placed on suspension pending investigation.

At the beginning of September, the claimant had purchased the two tools from a man named Bob who was selling the tools out of his truck. Claimant had known Bob from him making previous deliveries and purchases to this employer. Claimant had purchased a drill from Bob on a previous occasion. The two tools that the claimant purchased had serial numbers but had no other identifying marks that would have put the claimant on notice that the tools belonged to the employer. Bob had access to the plant while he was making deliveries because there was no security in place that restricted visitors.

On September 27, 2019, claimant visited with Mr. O'Dell again about the missing tools. By this time, claimant had learned that the tools were identified to have been stolen from the employer. Claimant told Mr. O'Dell that he did sell the two tools to two different pawn shops. Claimant was discharged via telephone approximately 20 minutes following the September 27, 2019 conversation. Claimant had no prior discipline during the course of his employment.

Claimant has received unemployment insurance benefits of \$2,886.00 for six weeks between September 29, 2019 and November 9, 2019. The employer participated by telephone in the fact-finding interview through witness Bill O'Dell.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. 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.

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.

Further, 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 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).

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). If anything, claimant's actions were an isolated incident of poor judgment and claimant is guilty of no more than "good faith errors in judgment." 871 IAC 24.32(1)(a). Instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Services*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App. 1986).

In this case, there was no credible evidence presented by the employer that the claimant stole the tools or was untruthful during his September 23, 2019 conversation with Mr. O'Dell. Mr. O'Dell was not specific in his questions to the claimant about involvement with stolen property. Mr. O'Dell only asked the claimant if he knew anything about missing tools and never identified the tools in question. Claimant would have no reason to believe the tools he purchased from Bob were missing from the employer. As such, the employer has failed to establish any intentional and substantial disregard of the employer's interest which rises to the level of willful misconduct. As such, benefits are allowed, provided the claimant is otherwise eligible. The claimant is not overpaid benefits due to the separation from employment with this employer. The employer may be charged for benefits paid.

DECISION:

The October 17, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The claimant is not overpaid benefits due to this separation from employment. The employer's account may be charged for benefits paid.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn