

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TROY W BATIEN
Claimant

VALERO SERVICES INC
Employer

APPEAL 16A-UI-08143-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/19/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 22, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on August 11, 2016. The claimant, Troy W. Batien, participated. The employer, Valero Services, Inc., participated through Bob Abbott. Employer's Exhibits 1 through 11 was received and admitted into the record without objection.

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, most recently as a maintenance tech, from April 14, 2008 until June 22, 2016, when he was discharged.

On June 9, 2016, claimant was working on adjusting a drag conveyor. Claimant completed this task using a wrench and without first getting a valid safe work permit. Abbott testified that obtaining a valid safe work permit prior to performing any work of this type is a violation of one of the employer's cardinal rules, the safe work permit policy. (Exhibit 5) Claimant received training about this policy and other safety policies during his employment. (Exhibit 8)

Claimant was on vacation June 13 through June 17. The employer placed claimant on administrative leave from the time he returned from his vacation through June 22, so the employer could investigate. When the employer spoke to claimant about this issue, he stated that he did not understand or believe he needed a safe work permit to perform this task

In December 2011, claimant received a written warning for a safety violation. In June 2012, claimant received a warning for a lifesaving rule violation. In October 2014, claimant received a written reminder for his conduct at work. (Exhibit 1) Either the December 2011 warning or the June 2012 warning was issued as a final warning, but sufficient time passed without additional

disciplinary actions so the final nature of the warning no longer applied. Claimant testified that one of his prior warnings was issued due to failure to obtain a safe work permit. According to the employer's documentation, all work performed by maintenance employees "must be permitted using the safe work permitting process." (Exhibit 9)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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). 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).

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, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds Abbott's testimony more credible than claimant's testimony. Claimant's statements during his testimony were not consistent with the written statement he gave the employer at the time of the incident. Additionally, the amount of training he received and the specificity of the safety policies provided by the employer lead the administrative law judge to doubt he was uncertain whether his conduct violated the safe work permit policy.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. In this case, the rule at issue was put into place to ensure the safety of both claimant and all his coworkers. Claimant admits he was previously warned for violating the safe work permit policy. The employer has presented substantial and credible evidence that claimant violated one of the workplace rules after having been warned. This is disqualifying misconduct.

DECISION:

The July 22, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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