

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDY N ETTER
Claimant

BAKER GROUP
Employer

APPEAL 22A-UI-10266-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/20/22
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On April 21, 2022, Randy Etter (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated April 11, 2022 (reference 01) that denied unemployment insurance benefits based on a finding that claimant was discharged on March 16, 2022 for violation of a known company rule.

A telephone hearing was held on June 7, 2022. The parties were properly notified of the hearing. The claimant participated personally. Baker Group (employer/respondent) participated by Senior Payroll Specialist Kirstin Sick. Operations Manager Chris Knight participated as a witness for employer.

The fact-finding documents prepared by IWD prior to issuing the April 11, 2022 decision were provided to both parties prior to the hearing and admitted as Department’s Exhibit 1. Official notice was taken of the administrative record.

ISSUES:

- I. Was the separation from employment 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 began working for employer on April 2, 2013. He was employed as a full-time electrical general foreman. The most recent day claimant was present and performing work was March 16, 2022. Claimant was discharged by Mr. Knight on that date.

Mr. Knight discharged claimant due to discrepancies on his most recent timesheet. Claimant reported on his timesheet that he worked eight hours of “straight time” and three hours of overtime on both Thursday, March 10 and Monday, March 14, 2022. However, claimant was not physically present at the job site as expected for much of March 10 and all of March 14, 2022.

Claimant testified that he visited a doctor on March 10, 2022, was diagnosed with pneumonia, and was still too sick to work on March 14, 2022. He was not physically present at the job site on the afternoon of March 10, 2022 or all day on March 14, 2022. He testified he performed work remotely during those days. Claimant did not have permission to perform work remotely.

Employer requires employees to contact their supervisor to notify them of absences. Claimant was aware of this policy but did not report his absences. Claimant was also aware that employees are expected to be at the job site when they are performing work unless they are doing work-related tasks like getting supplies. Claimant was aware of the expectation that hours worked be accurately reported.

Mr. Knight learned from another employee on March 15, 2022, that claimant had not been present the afternoon of March 10 and all day on March 14, 2022. Mr. Knight reviewed the GPS tracker on claimant's work van and confirmed he had not been physically present at work from mid-morning on March 10, 2020 until the morning of March 15, 2022. Mr. Knight accordingly determined claimant had falsified his timesheet by reporting he had worked eight hours of "straight time" and three hours of overtime on each day when he was absent without permission on those days and discharged him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated April 11, 2022 (reference 01) that denied unemployment insurance benefits based on a finding that claimant was discharged on March 16, 2022 for violation of a known company rule is AFFIRMED.

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 provides in relevant part:

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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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).

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 is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

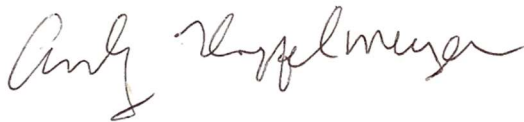
It is the duty of the administrative law judge, as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none 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.*

The administrative law judge did not find claimant's testimony to be reliable due to it being inconsistent. He initially testified that on March 10, 2022 he first went to get parts from a supplier and then went to the emergency room. He later testified he went to the emergency room first and then went to get parts. He also testified that the emergency room was on the way to the supplier and was on University Avenue in east Des Moines. However, the GPS tracking information does not show claimant visiting a University Avenue address on that date. Furthermore, the fact-finding documents indicate claimant stated he was at the supplier from 1 p.m. to 3 p.m. on March 10, 2022. However, the GPS tracking information shows he was at his home by 12:45 p.m. on that date. Notably, claimant did not present any documentation confirming his emergency room visit or diagnosis. The administrative law judge found the testimony from Mr. Knight as well as the fact-finding documentation to be more reliable and made factual findings accordingly.

Employer has carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Claimant reported he worked 11 hours on both March 10 and March 14, 2022 when he was in fact absent from the work site without notification or permission on those days. Claimant was aware of employer's policies requiring that he be present at the job site during work hours, that he report his absences, and that he accurately report hours worked. He chose not to follow these known company rules and was discharged as a result. Even if claimant was in fact ill as he reported he still failed to follow these policies. Benefits are therefore denied effective with the date of separation.

DECISION:

The decision dated April 11, 2022 (reference 01) that denied unemployment insurance benefits based on a finding that claimant was discharged on March 16, 2022 for violation of a known company rule is AFFIRMED. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
Administrative Law Judge

June 28, 2022
Decision Dated and Mailed

abd/abd