

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRADLEY WALKER
Claimant

ARCHER-DANIELS-MIDLAND CO
Employer

APPEAL 21A-UI-07777-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/31/21
Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Bradley Walker (claimant) appealed an Iowa Workforce Development March 9, 2021, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Archer-Daniels-Midland (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 26, 2021. The claimant participated personally and through former co-workers, Jesse Cottrell, and Kort Johnson. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge left a message but the employer did not respond. The administrative law judge took official notice of the administrative file.

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 worked for the employer from August 19, 2013, to January 13, 2021, and at the end of his employment was working as a full-time operator. He signed for receipt of the employer's handbook. The employer did not issue him any warnings during his employment.

The supervisor told the claimant there were two trucks on the lot that would be traded in. The claimant and the supervisor discussed whether the claimant could trade the tires and rims on his truck with the tires and rims on one of the trade in trucks. The supervisor said it would be fine but the claimant should wait until closer to the trade in date.

The switch of tires and rims was discussed numerous times over months and at least two coworkers heard the supervisor approve the matter four times. On January 3, 2021, the supervisor approved the claimant trading the tires and rims on January 9, 2021.

On January 14, 2021, law enforcement called the claimant about the tires and rims. The claimant explained that he had permission. The claimant explained this the employer's Human Resources Department. The employer asked the claimant to trade back and he did. The claimant was not allowed to return to work after January 13, 2021.

The claimant remembered an employee, who still works for the employer, who took copper from the employer's dumpster with permission and sold it. Later, the supervisor said he did not give permission and the employer demanded the money from the sale. The worker was not terminated.

The employer terminated the claimant on January 22, 2021, because he traded tires and rims with the permission of his supervisor. The supervisor continues to work for the employer.

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).

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

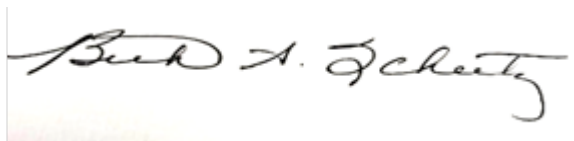
(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling 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.

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). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct.

The claimant acted on the permission of the supervisor. It treated its two employees disparately. The employee who followed his supervisor's instructions was terminated. The employee who lead an employee astray and gave away company property continued to work for the employer. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's March 9, 2021, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

June 8, 2021
Decision Dated and Mailed

bas/scn