

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ROBERT R BRANT
Claimant

APPEAL NO: 15A-UI-01262-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARCO LTD
Employer

OC: 01/04/15

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Parco Ltd. (employer) appealed a representative's January 22, 2015 decision (reference 01) that concluded Robert R. Brant (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 25, 2015. The claimant participated in the hearing. Greg Smith appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on September 30, 2011. He worked full time as assistant manager at the employer's Davenport, Iowa restaurant. His last day of work was January 6, 2015. The employer discharged him on that date. The reason asserted for the discharge was tampering with an internal investigation by harassing an employee witness.

On about January 3, 2015 there had been an incident involving a number of the employer's employees. The claimant had been the manager on duty at the time. One of the employees left a statement in an unsealed envelope addressed to the store manager. The claimant saw the envelope and read the statement, believing that as the manager on duty he had some responsibility for investigation of the incident. He felt the statement was not a very correct statement of the events as written, and commented to the employee, "This isn't really accurate, do you think you might want to rewrite it?" The employee responded, "No," and went about her duties for a period of time before leaving prior to the end of her shift. She did not return to work

thereafter. The employer later contacted her and she said that “the reason I walked out is because somebody higher up than me told me to risk my job and lie to you guys. I felt threatened and vulnerable. So I walked out.”

The employee had actually started employment elsewhere prior to leaving her employment with the employer. The claimant denied asking the employee to lie or doing anything to make the employee feel threatened and vulnerable, but only asked the one question and then let the matter go when she declined to rewrite her statement.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is tampering with an internal investigation by harassing an employee witness. The claimant had a good faith reason for looking at the statement and asking a simple question about whether the statement should be rewritten. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant did anything to harass the employee or to make her feel threatened and vulnerable. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 22, 2015 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs