

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL MARTINEZ
Claimant

TPI IOWA LLC
Employer

APPEAL 21A-UI-18928-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/04/21
Claimant: Appellant (1)

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.1(113)c - Discharge for Violation of Rules

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 26, 2021, (reference 02) unemployment insurance decision that denied benefits based upon claimant being discharged from work on July 1, 2021 for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on October 18, 2021. A Spanish interpreter, Mr. Nicholas, #14053 was utilized until he disconnected approximately 11 minutes into the hearing as we were going on the record. Spanish interpreter Raphael joined us for the remainder of the hearing. The claimant, Daniel Martinez, participated. The employer, TPI Iowa LLC, participated through Danielle Williams, senior human resources coordinator. Employer's cover page and Exhibits (1 of 8 – 8 of 8) were admitted. Judicial notice was taken of the administrative file.

ISSUES:

Did the claimant voluntarily quit without good cause attributable to the employer? Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having heard the testimony and reviewed all of the evidence in the record, the administrative law judge finds: claimant's first day of employment with employer was December 7, 2015 and his last day worked was July 1, 2021. Claimant was a fulltime crane operator. Claimant was discharged on July 6, 2021, for violation of safety rules. ER EXs 2 of 8 and 7 of 8. Claimant was warned of a similar violation on June 29, 2019, and of another safety rule issue on April 29, 2021. ER EXs 2 of 8 - 3 of 8.

The employer has rules and policies that address many things, including what misconduct is and that it can lead to corrective action, up to and including termination. ER EX 4 of 8. Claimant had received a copy of employer's personnel policies on the date of hire, in 2017 when updated, and most recently January 20, 2021. ER EX 5 of 8. Claimant was aware of the policies in question,

especially in light of the exchange that happened on June 29, 2021. Claimant knew or should have known his position was in jeopardy due to his knowledge that safety issues were grounds for termination of employment; his encounter of June 29, 2021 and his suspension on July 1, that led to the termination.

July 1, 2021, claimant was moving a Spar Cap with a crane without a tip guide, as required. When confronted by his supervisor, Marcia Englebrecht, claimant advised he knew he needed a tip guide for this, but didn't have one as the other crane operators were busy. When asked why he did not ask the finishing department for help, he replied he's not a PC, and can't ask other departments. He's not a PC, but can ask others for help. When asked why not ask his supervisor, he offered no reason, other than to say it was just a short distance and the blade had been sitting there for a long time, and it is no big deal. ER EX 2 of 8. The reason for the rule is when moving a suspended load, one of the things the tip guide does is ensure no one walks underneath the suspended load, because if it were to fall, serious injury and even death may occur. The incident was serious enough to warrant a suspension until the matter could be further investigated. ER EX 6 of 8. Upon further investigation, the June 29, 2021 matter came to light.

June 29, 2021, claimant was the tip guide for an overhead load that was being moved. While the load was suspended in the air, claimant abandoned his post to try to talk to his supervisor to complain about his acting PC. Claimant was cautioned that he failed to place barricades on the stopped suspended overhead load and that he either needed to stay with the load as the tip guide or if transport had stopped, to place barricades. Claimant's reaction was to laugh. When asked what was so funny, claimant said he was going to go to HR anyway to complain, and did so without putting out barricades. ER EX 2 of 8. Claimant also was verbally warned about a safety matter on April 29, 2021. ER EX 3 of 8.

After reviewing the matter, while the incident in and of itself was a terminable offense, employer decided termination was appropriate, especially in light of the very similar issue of tip guide and transporting a suspended load encounter of June 29, 2021. Claimant was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). 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). 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).

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).

Iowa Admin. Code r. 871-24.1 provides:

Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

c. *Discharge*. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

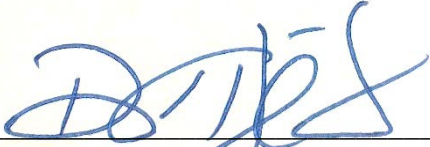
The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 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, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events. Claimant, for the most part provided a blanket denial, with some inconsistencies that the undersigned finds incredible. Such as, claimant asserts he didn't move the blade, but merely lifted the blade. This would still have it become a suspended load, needing a tip guide or barricades, of which he had neither.

July 1, 2021, claimant intentionally moved a suspended load without a tip guide contrary to known company rules. The issue should have been fresh in claimant's mind, as just two days earlier he had an encounter with his supervisor over the need for and duties of a tip guide. The reasons for the rules is to avoid injury and potentially death should the suspended load come loose or otherwise free. This behavior is in violation of known rules and was contrary to the best interests of the employer and is disqualifying misconduct.

DECISION:

The August 26, 2021, (reference 02) unemployment insurance decision is **AFFIRMED**. The 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.



Darrin T. Hamilton
Administrative Law Judge

October 26, 2021
Decision Dated and Mailed

dh/scn