

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RUSSHAWN K JACKSON
Claimant

CASEY'S SERVICES COMPANY
Employer

APPEAL 15A-UI-13743-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/08/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Russhawn Jackson (claimant) filed an appeal from the December 11, 2015 (reference 01) unemployment insurance decision that denied benefits based upon the determination Casey's Services Company (employer) discharged him for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on January 5, 2016. The claimant participated on his own behalf. The employer participated through Heating Ventilation Air Conditioning Refrigeration (HVACR) Supervisor Matt Glenn. Employer's Exhibit One was received.

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: The claimant was employed full time as a HVACR Install Technician beginning on January 6, 2014 and was separated from employment on November 10, 2015; when he was discharged. The claimant reported to the corporate office on Monday mornings and would then be assigned as part of a two-person crew to a jobsite in another location. The two crew members would load up the truck and commute to the jobsite, which could be located in another state, together.

On November 5, 2015, the claimant's co-worker observed the claimant texting while he was driving the employer's vehicle. The co-worker video recorded six minutes of the claimant's conduct on his own mobile device. On Monday, November 9, 2015, when the claimant reported to the corporate office for his assignment and to gather equipment, HVACR Supervisor Matt Glenn gave him a written warning for his conduct on November 5 which the claimant signed. The claimant was upset, got in his personal vehicle, and left the corporate office. Glenn had to send one person to cover the two-person job to which the claimant would have been assigned.

The following day, the claimant reported to work at the corporate office and Glenn had not yet arrived to work. The claimant began working on his monthly trainings. When Glenn arrived at the office, he and another individual approached the claimant and discharged him for walking off the job the day before.

The claimant had received previous written warnings related to cell phone usage or unsatisfactory work. On two occasions, he had been placed on five-day suspensions; which were clearly stated on the documents he received and signed.

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. Benefits are denied.

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).

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). 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). 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). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980).

The claimant testified he was told by Glenn that he was discharged on the morning of November 9 as a result of the cell phone incident. Glenn testified the claimant was only given a written warning on the morning of November 9 and denied discharging him prior to November 10. 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 the employer's version of events to be more credible. The claimant testified that Glenn told him on November 9 that he was discharged. However, in his appeal letter the claimant stated Glenn gave him a warning on November 9, and sent him home or suspended him for the day. The employer supplied a copy of the warning given to the claimant that morning which he signed. The warning is clearly identified as a "written warning." Glenn did not select to identify the document as a suspension which was an option listed on the form. Additionally, the claimant had received suspensions in the past on the same form and they were identified as resulting in a suspension with the number of days also stated. The claimant's testimony, that he was discharged or sent home on November 9, 2015, is not credible.

The claimant walked off the job on the morning of November 9, 2015; after he was given a written reprimand regarding cell phone usage. The employer is entitled to expect its employees to work as scheduled and to be responsive to warnings or corrective action that change is needed in order to maintain employment. As a failure to sign a written reprimand acknowledging its receipt is disqualifying misconduct as a matter of law, then it stands to reason that walking off the job following a written reprimand is also disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The December 11, 2015 (reference 01) 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/can