

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT A MILLER
Claimant

SCOTTS MANUFACTURING COMPANY
Employer

APPEAL 20R-UI-13951-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/05/20
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On September 11, 2020, Robert Miller (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated September 4, 2020 (reference 01) that denied benefits based on a finding claimant was discharged from work on July 1, 2020 for fighting on the job.

A telephone hearing was set for October 13, 2020 at 9:30 a.m. Due notice was issued for the hearing. However, claimant did not register a number for the hearing as instructed. After waiting 15 minutes from the hearing start time as a courtesy to claimant, the undersigned entered a default order.

Claimant appealed the default order to the Employment Appeal Board (EAB). The EAB remanded for a new hearing. A telephone hearing was held on January 5, 2021. The parties were properly notified of the hearing. The claimant participated personally. Claimant listed two former coworkers as witnesses but they were not available at the numbers registered at the time of hearing and therefore did not participate. Scotts Manufacturing Company (employer/respondent) did not register a number for the hearing and did not participate.

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 worked for employer as a full-time machine operator. Claimant began working for employer approximately 15 years ago. Claimant was discharged on July 1, 2020. The last day claimant worked on the job was a few days prior. Claimant's immediate supervisor was Clifford Crow.

Claimant was discharged following an incident with a coworker on his last day worked. On that day, claimant was having some issues with the machine he was operating. Claimant was able to fix the issue. However, the coworker insisted on coming into claimant's work area to look at the machine. Claimant told the coworker repeatedly that he did not need assistance and the coworker was not supposed to make adjustments to his machine. There were also COVID-19 social distancing restrictions in place at the workplace which prohibited employees being within six feet of each other. The coworker did not take heed of claimant's repeated requests to leave his machine alone and leave his work area. Claimant finally grabbed the coworker's arm and pulled him away from the machine. The coworker then went back to his work area and left for the day shortly thereafter. There was no further altercation of any kind.

Claimant immediately went to report this incident to his supervisor. Claimant was allowed to work out the rest of his shift and then was told he would be called in a few days. He was contacted by employer several days later and told he was discharged. Claimant was previously disciplined many years ago for a verbal altercation with a coworker.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated September 4, 2020 (reference 01) that denied benefits based on a finding claimant was discharged from work on July 1, 2020 for fighting on the job is REVERSED.

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.*

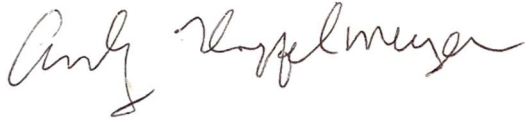
When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific 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).

Employer has not 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). The administrative law judge finds this single incident, while perhaps ill-advised, does not rise to the level of disqualifying misconduct. This finding is supported by employer's decision to allow claimant to continue working through the day after the incident occurred. The administrative law judge also finds it relevant that claimant immediately reported this incident to his supervisor and as such was clearly not attempting to conceal what had occurred. The incident leading to discharge is best characterized as an isolated error in judgment or discretion. The administrative law judge finds the prior discipline many years prior for a verbal altercation with a coworker was of a different nature and carries little weight in determining the severity of the current act.

DECISION:

The decision dated September 4, 2020 (reference 01) that denied benefits based on a finding claimant was discharged from work on July 1, 2020 for fighting on the job is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
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January 21, 2021
Decision Dated and Mailed

abd/kmj