

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTINE N GAULEY
Claimant

STELLAR INDUSTRIES INC
Employer

APPEAL 16A-UI-07788-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/19/16
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the July 7, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 3, 2016. The claimant participated personally. The employer participated through Rhonda Krause, manager of manufacturing. Employer exhibit was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an assembler and was separated from employment on June 15, 2016, when she was discharged for unauthorized possession of employer property.

The claimant's husband also worked for the employer. He agreed to help paint a four-wheeler in his personal time for a co-worker named, Warren Gilpin. The claimant guessed that Mr. Gilpin and her husband negotiated around \$350 payment for the work performed by Mr. Gauley. When Mr. Gilpin could not pay the amount, he offered Mr. Gauley a winch in exchange for payment, and Mr. Gauley accepted the winch. The winch was worth approximately \$625. Mr. Gilpin also "paid" Mr. Gauley's brother with a winch for other services rendered outside of work.

After approximately three months of possession, Mr. Gauley placed the winch for sale online and the employer learned of the sale posting from other employees, who reported the winch in question appeared to belong to the employer. Mr. Gilipin worked with winches in the crane department. Mr. Gilipin was unable to be interviewed about the origin of the winch because he quit the employment abruptly when brought in for questioning. The claimant herself did not work with winches, but they were stored on the premises on a rack that she would pass periodically during the course of her work. The claimant denied knowing that the winch in question was stolen and the employer reports that the type of winch in question (Employer exhibit 1) was distinguishable and the claimant knew or should have known it was the employer's, as it was not easily available to purchase. The winch was not a "Stellar" brand. The claimant reported she (and her husband) were cooperative with the employer and law enforcement once made aware the winch in question was stolen, but was still discharged.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,418.00, since filing a claim with an effective date of June 19, 2016. The administrative record also establishes that the employer did participate in the fact-finding interview by way of Leanne Van Ort, with the corporate office.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(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.

Misconduct is defined as:

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. 871 IAC 24.32(1)a 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

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.* 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 was discharged for work-connected misconduct as defined by the unemployment insurance law.

An employee has a duty of honest to it is employer. At the crux of the case is the claimant's conduct in the transaction that led to her discharge; the honesty or culpability of Mr. Gilpin or Mr. Gauley are distinguishable than that of the claimant. The claimant did not work in the crane department that used the winches, and did not participate in the painting of the four-wheeler for Mr. Gilpin, nor did she engage in negotiations for pay for the services. Rather, it was the claimant's husband and Mr. Gilpin only involved in those activities, outside of work. Certainly the housing or storing of a stolen item is not condoned, but the administrative law judge is not persuaded that the claimant herself would have known or should have reasonably identified the winch given to her husband belonged to the employer, given its lack of "Stellar" or noteworthy markings, and her lack of exposure to them in her job. Further, it cannot be ignored that the claimant was cooperative with law enforcement and her employer once made aware of the stolen property. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

Since the claimant is eligible for benefits, the issues of recovery of any overpayment and possible relief from charges are moot.

DECISION:

The July 7, 2016, (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The claimant has not been overpaid benefits and the employer's account is not relieved of charges.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs