

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BENJAMIN I MILLER
Claimant

ABC ELECTRICAL SERVICES LLC
Employer

APPEAL NO. 18A-UI-04971-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/08/18
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 25, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 16, 2018. Claimant participated personally. Employer participated by Lee Cochran, Terry Scroggy and Leroy Clair.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 2, 2018. Employer discharged claimant on April 2, 2018, because claimant repeatedly would walk off the job site when feeling ill or dizzy without alerting his supervisor, even after being repeatedly warned about doing so.

Claimant was not consistent in his attendance at work. Claimant was a no-call/no-show for work for a period of time and would often leave work in the middle of the day without reporting his leaving to his supervisor. Claimant would not clock out before heading to his car. Employer told claimant on multiple occasions, and claimant was also informed through documentation at the time of his hire that he could not leave work without notifying his site supervisor.

Claimant informed employer on March 23, 2018, that he'd been repeatedly absent because of an unnamed illness and that he'd felt dizzy and disoriented often. Employer stated that they understood, but needed to know if claimant was leaving the work site. On March 30, 2018, claimant left the work area again to rest and didn't inform his supervisor. Employer stated that they needed a note from claimant's doctor allowing him to work without restrictions before allowing a return to work. (As claimant often worked on a ladder, claimant's concerns regarding dizziness and disorientation were very concerning to employer). Claimant returned to work on April 2, 2018, but did not have a doctor's note. Claimant tried to work, but shortly thereafter walked off the job site and went to his car without reporting to his supervisor. Claimant sat in his car for hours while still receiving pay, as he'd done many times in the past. Eventually, claimant

left work altogether, but didn't inform employer. Employer terminated claimant for his abandonment of work.

REASONING AND CONCLUSIONS OF LAW:

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(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).

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. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct 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 Ct. 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning absenteeism and job abandonment. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant had repeated warnings that he was supposed to talk with his foreman before leaving the job site, but continued not to do so. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated April 25, 2018, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn