

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MATTHEW W FOLMAR
Claimant

POET BIOREFINING - GOWRIE
Employer

APPEAL NO. 14A-UI-05446-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/06/14
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 19, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 16, 2014. Claimant participated personally. Employer participated by Gary Eischeid. Employer's Exhibits 1-7 were admitted into evidence.

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 March 28, 2014.

Employer discharged claimant on April 1, 2014 because of claimant's allegedly improper personal use of gifts given by suppliers. As a part of claimant's job, he made orders for supplies to be used by the company's lab. When claimant ordered from Uline, the supplier gave companies the ability to get small gifts with their orders when they reached certain levels. Claimant made three separate orders where he received and kept small gifts from Uline.

Employer has a policy concerning the receipt of gifts from suppliers. Included within the employee handbook it states, "{t}eam members are generally prohibited from accepting gifts, entertainment or any other special considerations or benefits...since it may create a compromising situation or a conflict of interest..." But, under the same heading the Handbook also states, "{g}ifts of nominal estimated value (less than \$50) may be accepted under most circumstances. These items do not need to be reported to management."

REASONING AND CONCLUSIONS OF LAW:

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). 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). The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning receipt and reporting of gifts. The Employee Handbook specifically states that items under \$50.00 received do not need to be reported to management. Whereas claimant might not have made the wise choices that an experienced purchaser for the company would have done, he certainly hasn't been shown to

have done anything willfully against company policy. Claimant was not warned concerning this policy, as the Employee Handbook appears to support his actions, or, at best from the company's point of view, is contradictory.

The last incident, which brought about the discharge, fails to constitute misconduct because there was no willfulness, and no demonstrable violation of company policy. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated May 19, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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