

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSE J MARTINDALE
Claimant

JC TOLAND PAINTING LLC
Employer

APPEAL 15A-UI-13763-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jesse Martindale (claimant) filed an appeal from the December 4, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination JC Toland Painting LLC (employer) discharged him for dishonesty in connection with his work. The parties were properly notified about the hearing. A telephone hearing was held on January 6, 2016. The claimant participated on his own behalf. The employer participated through Owner Jeremy Toland.

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 Painter beginning on October 6, 2014, and was separated from employment on October 28, 2015, when he was discharged. The employer determines at the start of each job what the goal hours or how many hours are needed to complete the job should be based on the scope of the work that the customer wants completed. Occasionally, if its employees finish the job early, the supervisor at the office can approve the employees to receive payment for a full day of work. That communication would come through the foreman at the jobsite.

On October 27, 2015, the claimant was working as part of a two-person crew. The other person on the crew was Foreman Scott Newman. The employer expected the claimant to follow Newman's directions while on the jobsite. The crew finished their work before noon. Newman told the claimant to record a full day of work on his timesheet and, if the office did not like it, they could change it back. At 12:00 p.m., Owner Jeremy Toland went to the jobsite. He discovered that the crew had completed their work and left for the day.

The following day, Supervisor Scott Russell noticed that the claimant and Newman had recorded a full day of work on their timesheets. He had them change their timesheets to the time actually worked the previous day and reported the situation to Toland. Toland confronted

Newman about the situation who acknowledged leaving before noon but believed they could get paid for the full day. Toland discharged Newman and the claimant for theft and timecard fraud that day.

REASONING AND CONCLUSIONS OF LAW:

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

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).

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. 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 the 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Normally theft, including timecard fraud, is disqualifying misconduct. However, in this case, the employer has failed to show that the claimant engaged in willful or deliberate misconduct. The employer expected the claimant to follow the directions of Newman, his foreman, which included him telling the claimant how to fill out his timesheet and if he was going to be paid for additional time beyond what was worked. Newman instructed the claimant to record a full day of work when they left early on October 27th. The claimant would not normally be the one to obtain supervisor approval for the additional time. The claimant's conduct, while potentially careless or indicative of poor judgement, does not rise to the level of disqualifying misconduct when he was following the instructions of a lead employee or foreman. Accordingly, benefits are allowed.

DECISION:

The December 4, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs