

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**THOMAS SCHUCK**  
Claimant

**BHJ USA LLC**  
Employer

**APPEAL 20A-UI-01376-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/19/20**  
**Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.3-7 – Overpayment  
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

**STATEMENT OF THE CASE:**

BHJ USA (employer) appealed a representative's February 12, 2020, decision (reference 05) that concluded Thomas Schuck (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 3, 2020. The claimant participated personally. The employer participated by Amber Brouhard, Human Resources Partner. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 3, 2019, and at the end of his employment was working as a full-time robotic machine arm operator. On Mondays and Tuesdays, he worked from 6:00 p.m. to 6:00 a.m. On Fridays and Saturdays, he worked from 6:00 a.m. to 6:00 p.m. Every other Sunday he worked a four to ten-hour shift starting at 8:00 a.m.

He signed for receipt of the employer's handbook on October 3, 2019. The employer issued the claimant a written warning for attendance on December 9, 2019. The claimant properly reported one absence due to illness and once he worked a partial day. The employer notified the claimant that further infractions could result in termination from employment.

The claimant worked in an area that had another small room behind it. Employees used the small room to avoid work and use drugs. The other employees activities made it difficult for the claimant to concentrate and perform his work. Employees often approached the claimant while he was working. The claimant complained to his supervisor, Kevin Cameron, at least twice. Mr. Cameron said he would talk to employees.

The claimant worked with an employee who bullied employees and threatened the claimant's safety. The employee drove a forklift at the claimant so the claimant would have to jump out of

the way. The employee drove the forklift into a stack of pallets and broke them. He threw the pallet pieces into the air and one piece at the claimant. Multiple times the forklift operator would yell that he was going to assault someone or go to jail. He would call his wife/girlfriend and tell her he was going to assault someone at work and go to jail. The operator made these comments in the presence of Supervisor Cameron. The claimant was afraid of the operator.

On January 20, 2020, the claimant started his shift at 6:00 p.m. After 3:00 a.m. on January 22, 2020, a pallet broke in the freezer and meat fell off. The forklift operator was supposed to find a new pallet and put the meat on it. Instead, the operator told the claimant he had to do his job. The operator began talking about assaulting someone and going to jail. The claimant became afraid and looked everywhere for a supervisor. He called him on the radio but received no answer. The claimant often had issues finding Supervisor Cameron at work. The claimant could not find him and decided to leave work rather than be bullied or risk injury. At 3:30 a.m. the claimant clocked out prior to end of his shift.

The claimant went home and at 6:00 a.m. he sent a text to the employer saying he would be at work for the next shift. He needed to speak with the supervisor. The supervisor responded, "okay". On January 21, 2020, the claimant arrived at work prepared to speak with the employer. The supervisor terminated the claimant before asking what had happened. The employer terminated the claimant for job abandonment.

The claimant filed for unemployment insurance benefits with an effective date of January 19, 2020. The employer provided the name and number of Amber Brouhard as the person who would participate in the fact-finding interview on February 11, 2020. Ms. Brouhard indicated she would not be available and provided some documents for the fact finding interview. The employer did not identify the dates or submit the specific rule or policy that the claimant violated which caused the separation. The fact finder had questions and left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond or provide an eye witness to the reason for the separation.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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).

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. It did not question the claimant about his reason for leaving early. It terminated him without investigation. The claimant provided good cause for leaving work early and not reporting his absence to a supervisor. He could not find a supervisor on site and he felt unsafe. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

#### **DECISION:**

The representative's February 12, 2020, decision (reference 05) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/scn