

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVEN L KINNEY
Claimant

LENNOX INDUSTRIES INC
Employer

APPEAL 18A-UI-10506-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/29/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 18, 2018, (reference 02) that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 6, 2018. Claimant participated. Employer did not participate. Official notice was taken of agency records. Employer's Exhibit 1 was admitted into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct sufficient to disqualify him from receipt of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked full time as a press operator beginning in March 2012 through September 25, 2018, when he was discharged.

Since the facility was struck by a tornado in late July 2018, the buzzer system has been inoperable. The buzzer is usually sounded at the end of a work shift so employees know when to punch out. Since the buzzer have been inoperable claimant has relieved on his coworkers to tell him when it was time to punch out. On September 8 the claimant was to work until midnight. He was at his work station reading a newspaper article waiting for his coworkers to tell him that it was time to punch out when he realized it was 12:20 a.m. Claimant punched out and went to the gas station after work. He ran into a supervisor Barry and was venting and complaining to Barry that his coworkers had not told him it was time to punch out. The claimant was upset about not punching out on time because failure to punch out on time is a work rule violation that could have resulted in the claimant being assigned a point under the employer's rules and policies. Barry reported to management that the claimant made a comment that it was "time to bring out the guns." The claimant does not remember if he made the comment, but if he did he was coming about his arms and not actual weapons. The claimant does not own a gun or a weapon.

After Barry reported what he thought the claimant said to management an investigation was done and the claimant was suspended effective September 10 while the employer investigated. One of the employer's work rules provides that threatening violence on company property at any time would lead to discharge. The claimant was told by letter dated September 28, 2018 that he was being discharged for violating the employer's rule against workplace violence.

REASONING AND CONCLUSIONS OF LAW:

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

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).

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). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425

N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. The claimant did make the comment to a supervisor about “time to get the guns” when he was off work time and off company property. The comment was made during a conversation when the claimant was merely venting about his coworkers. The employer’s rules specifically mention prohibited conduct on company property. The claimant made a rash comment during a moment of frustration. The conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Under these circumstances, the employer has not met their burden to prove substantial job connected misconduct and benefits are allowed.

DECISION:

The October 18, 2018, (reference 02) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs