

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DUSTIN W WATT
Claimant

APPEAL NO. 12A-UI-01983-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAHR BEVERAGE INC
Employer

OC: 01/08/12
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Fahr Beverage, filed an appeal from a decision dated February 22, 2012, reference 01. The decision allowed benefits to the claimant, Dustin Watt. After due notice was issued, a hearing was held by telephone conference call on March 15, 2012. The claimant participated on his own behalf with Jason Timler, Luke Scarborough and was presented by Luke Guthrie. The employer participated by Human Resources Vice President Jane Fahr..

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Dustin Watt was employed by Fahr Beverage from December 20, 2010 until January 6, 2011 as a full-time support person. He would be assigned to various teams on a daily or weekly basis depending on the needs of the employer. At first he was required to report to his "primary supervisor" Chris Gaudin before going home from work every day to make sure there was no more work which needed to be done.

On September 28, 2011, the claimant was given a written warning for not reporting to his team supervisor, Chad Hart. On January 4, 2012, he reported to Mr. Hart he was finished with his current assignment. Mr. Hart said to "check with the driver" to make sure he did not need any help and if it was "okay" with the driver he could go home. Mr. Watt did so and the driver said he had only two more stops and by the time the claimant would be able to meet up with him, those would already be done so he was not needed. He went home and was discharged on January 6, 2012, by General Manager Terry Timmerman for not reporting to his primary supervisor before going home for the day.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

It appears the work situation, and some changes in the procedures, created more than a little confusion as to the exact person to whom Mr. Watt was required to report before going home. Mr. Gaudin had made statements which Mr. Watt took to mean he was no longer the primary supervisor. This may have been a mistake but there is no evidence the claimant did, in fact, do anything other than make a good-faith error.

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).

The record does not establish the claimant was negligent or willfully refused to follow the directions of his employer. Without a showing of malicious intent misconduct cannot be established and disqualification may not be imposed.

DECISION:

The representative's decision of February 22, 2012, reference 01, is affirmed. Dustin Watt is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css