

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMUEL OROZCO
Claimant

SEABOARD TRIUMPH FOODS
Employer

APPEAL 21A-UI-00338-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On November 20, 2020, the claimant filed an appeal from the November 10, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 5, 2021. Claimant participated. Employer participated through human resource supervisor Cristina Scott.

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: Claimant began working for employer on November 6, 2017. Claimant last worked as a full-time general maintenance worker. Claimant was separated from employment on August 7, 2020, when he was terminated.

On August 2, 2020, claimant saw that his co-worker had a flat tire. Claimant went out to the parking lot on his break and examined the tire. Claimant also opened the unlocked door of his co-worker's car. Claimant did not damage the car or tire or take anything from the vehicle. An employee saw claimant and reported him to a supervisor. The supervisor reviewed surveillance footage and saw claimant crouched down behind the vehicle and opening the door of the vehicle. Claimant was sent home.

On August 7, 2020, employer interviewed claimant about the incident. Claimant admitted entering the vehicle, and stated that his co-worker did not know he was entering the vehicle.

It was not reported that claimant damaged or took anything from the vehicle.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant examined his co-worker's tire and opened the unlocked door of his vehicle while out in the parking lot. Claimant asserts he did so to try to repair his co-worker's flat tire.

Whether that is true is really beside the point. Employer did not present any evidence or accusation that claimant damaged the vehicle or stole anything out of the vehicle. If claimant did not have permission to touch the vehicle, it was an error of judgment for him to do so. But employer could not point to a specific rule that would have prohibited his conduct or any harm that claimant's conduct caused. Employer failed to establish the last incident that led to termination constitutes misconduct.

DECISION:

The November 10, 2020, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

February 18, 2021
Decision Dated and Mailed

cal/mh