

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ERIC C SMITH
Claimant

APPEAL NO: 19A-UI-01301-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANNETT HOLDINGS INC
Employer

OC: 01/06/19
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 8, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 28, 2019. The claimant participated in the hearing. Arron Rinehart, Manager of IT Networks and Support, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time support technician for Annett Holdings from May 22, 2017 to January 8, 2019. He was discharged because the employer was dissatisfied with his work performance.

The claimant was responsible for maintaining the correct operations of machines, services and data bases. Manager of IT Networks and Support Arron Rinehart spoke to the claimant several times about the quality of his work, lack of production, and amount of rework required of the claimant's projects. On October 9, 2018, the employer placed the claimant on probation to last through January 1, 2019. The probation warning stated the consequence of the claimant's failure to improve his performance would be termination of his employment. The employer conducted the claimant's annual review December 18, 2018, and the claimant's scores were low. The last straw for the employer occurred when the claimant worked on four machines and said they were inoperable and Mr. Rinehart had another salesperson work on the machines and he was able to fix all four. The employer terminated the claimant's employment January 8, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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. IDJS*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not

misconduct in the absence of evidence of intent. *Miller v. EAB*, 423 N.W.2d 211 (Iowa App. 1988).

While the claimant failed to meet the employer's expectations, he performed the job to the best of his ability. The claimant was aware his job was in jeopardy when he was placed on probation but did not receive any feedback between the October 2018 probation warning and the December 18, 2018, performance review and believed the employer was going to continue his employment. Additionally, although the claimant may have lacked the ability to perform the job, there is no evidence indicating that his failure to meet the employer's expectations was intentional. Consequently, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The February 8, 2019, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn