

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LUCAS HEALD
Claimant

HNK LLC
Employer

APPEAL NO. 20R-UI-11425-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

This matter is before the administrative law judge pursuant to the Employment Appeal Board remand in 20B-UI-07786 and pursuant to the claimant's timely appeal from the June 29, 2020, reference 02, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on May 16, 2020 for insubordination in connection with the employment. After due notice was issued, a hearing was held on November 9, 2020. Claimant Lucas Heald participated. Hammad Grewal represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO and KPYX) and received Exhibits 1 and 2 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lucas Heald was employed by HNK, L.L.C. as a full-time District Manager from September 2019 until May 14, 2020, when the business owner, Hammad Grewal, discharged him from the employment. The employer is a mobile phone reseller. The company consists of several retail stores that resell Boost Mobile products and services. Most of the stores are located in the Quad Cities. The employer has additional stores in Pekin and Peoria, Illinois. Mr. Grewal was Mr. Heald's supervisor. Mr. Heald supervised four managers and was otherwise responsible for operations at the several store locations. The stores' hours of operation were 10:00 a.m. to 7:00 p.m., Monday through Saturday, and noon to 5:00 p.m. on Sunday. Mr. Heald's duties included ensuring the stores operated within standards set by Boost Mobile. Those standards included a requirements that the stores open on time, that the stores be adequately staffed, that the stores remain adequately stocked to facilitate sales, that the stores meet production goals,

and that the stores remain clean. Boost Mobile conducts unannounced audits of HNK's stores to ensure compliance with Boost Mobile standards. The Boost Mobile field representative will then email a report to the Boost Mobile management and to Mr. Grewal setting forth observed deficiencies, strengths, and improvements relative to prior audits. Boost Mobile may impose a financial penalty on HNK for violation of its standards. Mr. Heald's duties included hiring managers and sales staff, meeting with managers and other staff on a regular basis, conducting performance reviews with the store managers, implementing performance improvement plans for low performers, and conducting inventory and accounting audits.

On May 13, 2020, Mr. Grewal met with Mr. Heald for three hours at the Kimberly Road store in Davenport for a quarterly review. During the meeting, Mr. Heald acknowledged deficiencies that needed to be remedied. Mr. Grewal had previously discussed concerns with Mr. Heald and had decided to implement a written performance improvement plan to outline expectations in connection with the May 13, 2020 quarterly review. When the discussion turned to issuance of the performance improvement plan, Mr. Heald became upset. Mr. Heald said that he had never been written up in 37 years. Mr. Heald requested that the coaching be limited to a verbal discussion. Mr. Grewal explained that matters had been discussed numerous times and that he now needed to reduce his concerns to writing. Mr. Heald told Mr. Grewal that the stores had been "shit holes" before Mr. Heald came on board. Mr. Heald told Mr. Grewal that he should stop complaining about cleanliness of the stores and focus on sales. Mr. Grewal stated that revenue numbers were important, but that compliance with Boost Mobile operations standards were also important. In response to Mr. Grewal's statement that Mr. Heald needed to enforce standards at the stores, Mr. Heald stated that the store staffs did not listen to him. Mr. Grewal told Mr. Heald that Mr. Heald needed to work side-by-side with front managers to communicate and reinforce standards. Mr. Heald asked Mr. Grewal whether the employer expected him to clean the stores. Mr. Grewal reiterated that he expected Mr. Heald to remedy situations if stores were not up to standards. Mr. Grewal told Mr. Heald that he was Mr. Grewal's eyes and ears and that it was part of Mr. Heald's job to get things corrected. Mr. Grewal told Mr. Heald that the performance improvement plan was not a bad thing, but instead just another step in the discussion after previous discussions. Mr. Heald accused Mr. Grewal of not trusting Mr. Heald and his judgment. This was a reference, in part, to Mr. Grewal's previous investigation of fraudulent practices at stores under Mr. Heald's supervision. Mr. Heald told Mr. Grewal that he was not going to quit and that Mr. Grewal should just fire him if he did not want him there. Mr. Grewal stated that he did not want to do that. Mr. Heald continued to be upset and commenced writing a rebuttal to the performance improvement plan. Mr. Grewal told Mr. Heald that he needed Mr. Heald's commitment that he was on board with addressing the concerns that had been raised. Mr. Heald stated he was not on board and that Mr. Grewal needed to fire him. Mr. Grewal said that if that was what Mr. Heald wanted, then that was the end of the discussion and "we're done." Mr. Grewal summoned another staff member, his brother, to the store to present as Mr. Grewal requested return of employer-issued property.

The employer listed his concerns in the performance improvement plan as follows:

Lucas needs to start having REGULAR weekly Managers and Front Line Sales Rep meetings. Lucas is not conducting Regular 1:1 with all Managers and Assistant Managers to make sure the entire team is on the same page. Accessories for all stores need to be orders on a regular and timely basis to reduce out of stocks. A few stores do not open on time and are habitual offenders of company policies. Cleanliness of stores is not to standard. Lucas is failing to complete DM – Store Visit Logs on a daily and regular basis by 9pm end of day, as week discussed in our meeting on March 11. Hold managers accountable for completing all daily duties and following up with them on all store issues, variances and the like promptly.

The employer referenced prior discussions in the disciplinary document as follows:

We have discussed these issues verbally many times. Lucas is not respectful to feedback given, likes to argue and wants to discuss numbers or give a statement/excuse as to why things are not up to par.

The employer listed his expectations in the disciplinary document as follows:

DM – Store Visit log must be completed every day and submitted no later than 9pm. All stores need to be open daily one time and ready to transact at store open time. Review alarm log daily and follow up with violator same day and follow appropriate protocol. Regular and weekly Managers meeting shall start ASAP as well as weekly front-line rep trainings and meetings. Review and certify all reps/managers using the New Hire Onboarding guide during the month of May 2020. Make sure all Managers and Reps understand their daily duties and expectations. If disciplinary action needs to be taken – do not delay. Have employment interviews on regular and weekly basis – reach out to applicants in a timely manner (same day or within 24 hours). Hold all Managers and team members accountable for completing all daily duties and following up with them on all store issues, variances and the like in a timely fashion, and hold all team members accountable to company policies and expectations.

The document stated “Performance must immediately demonstrate improvement and be sustained. Failure to meet expectations will result in further disciplinary action, up to and including termination.”

Mr. Heald’s rebuttal stated as follows:

To whom it may concern I Luas Heald am filling [sic] this rebuttal in conjunction with the Performance Correction Notice give to me by Hammad Grewal on this day 05/13/2020. In the first sentence under the statement of problem states Lucas needs to start having REGULAR weekly manager and front line sales rep meetings. My rebuttal is this. I was told about having weekly managers [meetings] 2 weeks ago. The first meeting we had. The second meeting was canceled due to me being in the hospital. Accessories have not only been ordered consistently but [there] has also been more accessory profit per store. YoY [year over year] for every month I have been employed at HNK LLC. All stores that I manage have seen an increase in the core sales metrics. I agree the DM visit forms have not been filled out everyday. Most of these days were due to having to cover stores due to shortage of employees. I will going forward to the best of my ability ensure all required forms giving [sic] to me by Hamad [sic] Grewal will be filled out in a timely manor [sic].

REASONING AND CONCLUSIONS OF LAW:

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct.

App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418 (Iowa Ct. App. 1989).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes legitimate employer concerns, but does not establish conduct that rises to the level of a willful and wanton disregard of the interests of the employer. The employer met with the claimant on May 13, 2020 not for the purpose of discharging the claimant from the employment for misconduct, but to address multiple concerns the employer had regarding the claimant's oversight of operations at the employer's several stores. It is clear that the claimant felt broadsided by the performance improvement plan and did not respond in a reasonable and appropriate manner when the employer broached the topic. If the employer was seeking buy-in from his highest ranking manager, there would be no reason to expect it through issuance of a performance improvement plan. It was reasonable for the employer to retain and exercise authority to direct operations at his business and unreasonable for claimant to expect otherwise. It is clear that the claimant and the employer had differing perspectives, that the relationship had become strained, and that a reasonable person in the claimant's position should have yielded. The weight of the evidence does not support the employer's assertion the claimant called the employer a "f**king a**hole" during the heated exchange, though the claimant did use profanity. The weight of the evidence does not establish a pattern of unreasonable refusal to comply with reasonable directives. The profanity the claimant used on May 13 demonstrated poor judgment, but the weight of the evidence does not indicate profanity directed at the employer with the intent to undermine the employer's authority. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided he meet all other eligibility requirements. The employer's account may be charged.

DECISION:

The June 29, 2020, reference 02, decision is reversed. The claimant was discharged for no disqualifying reason. The discharge was effective May 13, 2020. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

A rectangular box containing a handwritten signature in black ink that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

December 18, 2020
Decision Dated and Mailed

jet/mh