

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON A KING
Claimant

POLARIS INDUSTRIES MANUF LLC
Employer

APPEAL 15A-UI-13454-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/08/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 1, 2015 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 29, 2015. Claimant participated. Employer participated through human resources generalist Jennifer Lundquist. Employer's Exhibit One was admitted into record with no objection.

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 was employed full time as an assembler from December 21, 2014 and was separated from employment on November 11, 2015; when he was discharged.

On November 10, 2015, the employer was notified that claimant was not at his station at the end of his shift. The employer then investigated to determine what happened by interviewing employees and reviewing video cameras (Employer's Exhibit One). At 3:40 p.m., claimant left the building (Employer's Exhibit One). At 3:57 p.m., claimant came back into the building and stood by a time clock and then at 4:00 p.m. he clocked out and left (Employer's Exhibit One). The time clock claimant used was not near his work area.

The employer has a policy where employees are required to stay at their workstation until the end of their shift and then they can leave their workstation and clock out (Employer's Exhibit One). Claimant's shift ended at 4:00 p.m. on November 10, 2015. Ms. Lundquist questioned claimant about the incident. Claimant initially denied leaving early and then said he had to drop off a sheet of paper but claimant did not have anything in his hands in the video. The employer determined it only takes three minutes to get to his vehicle from the building. During the employer's investigation, claimant's group lead said claimant did not have permission to leave early.

Claimant had received a final written warning for leaving his workstation prior to the end of his shift on January 30, 2015 (Employer's Exhibit One). Claimant was warned that a further violation could result in termination (Employer's Exhibit One).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code § 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.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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 does not constitute 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).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has a policy that requires employees to stay in their work area during scheduled working hours, unless they have permission to leave (Employer's Exhibit One). On November 10, 2015, claimant left his work area and went to his car approximately 20 minutes before his shift ended (Employer's Exhibit One). Claimant's argument that he had to take a work related document to his vehicle and that he did not want to get it dirty is not persuasive. Claimant testified that prior to leaving his work area, he had already cleaned his area up; thus, there should have been no fear of getting his document dirty. It is also noted, that claimant only had approximately 20 minutes until his shift ended and he could have waited until the end of his shift to take his document to his vehicle and leave. Furthermore, the employer testified that during their investigation, claimant's group lead did not give him permission to leave his work area. Ms. Lundquist also testified when claimant returned from the parking lot after 17 minutes outside (the employer tested the trip and it should have taken approximately six minutes to walk to and from claimant's vehicle), he did not return to his work area but to a different area to clock out (Employer's Exhibit One). Claimant left his work area early on November 10, 2015; despite having a prior warning for leaving his work area early (Employer's Exhibit One).

The employer has presented substantial and credible evidence that on November 10, 2015 the claimant left his workstation approximately 20 minutes before the end of his scheduled shift without permission after he had already been given a final warning for similar conduct. This is disqualifying misconduct. Benefits are denied.

DECISION:

The December 1, 2015 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/can