

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT W OVERTON
Claimant

CHRISTIAN PRINTERS INC
Employer

APPEAL 19A-UI-07130-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/11/19
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Claimant/appellant filed an appeal from the September 5, 2019 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 1, 2019, at 11:00 a.m. Claimant participated. Employer participated through Steve Hews, President. Trent Keegan, Prepress Manager, was a witness for employer. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked as a full-time prepress operator from January 28, 2019 until his employment with Christian Printers, Inc. ended on August 12, 2019. (Keegan Testimony; Hews Testimony) Claimant's schedule was Monday through Friday from 8:00 a.m. until 5:00 p.m. (Keegan Testimony) Claimant's direct supervisors were Trent Keegan, prepress manager, and Ronda Shinogel, acting prepress manager. (Keegan Testimony)

When claimant interviewed for employment with Christian Printers, Inc., claimant stated that his desired rate of pay was \$25.00 per hour. (Claimant Testimony) Employer offered claimant employment at a rate of pay of \$22.00 per hour, which claimant accepted. (Claimant Testimony) Employer did not promise claimant a raise in pay during the interview or negotiation process. (Keegan Testimony) Claimant believed he was entitled to a raise in pay. (Claimant Testimony)

On Friday, August 9, 2019, Keegan and claimant discussed claimant's request for a raise in pay. (Keegan Testimony) Keegan told claimant that he would not get a raise at that time. (Keegan Testimony) Claimant stated that he would only work half as hard as he had been working, if he was not given a raise. (Keegan Testimony) Keegan asked claimant if he was serious; claimant repeated that he would not work as hard. (Keegan Testimony) There were no

witnesses to this exchange, so Keegan had claimant repeat their conversation in Shinogel's presence. (Keegan Testimony)

On Monday, August 12, 2019, Keegan notified Steve Hews, President, of the conversation with claimant on August 9, 2019. (Keegan Testimony) Hews was taken aback and met with Keegan and claimant to discuss the matter further. (Hews Testimony) Hews gave claimant an opportunity to explain or take back his comment. (Hews Testimony) Claimant repeated his comment that he would not work as hard if he was not given a raise. (Hews Testimony; Keegan Testimony) Hews told claimant that he would not have an employee put forth half effort and terminated claimant's employment. (Hews Testimony) Claimant alleges that he told Keegan and Hews that he would only put forth \$22.00 per hour worth of effort. (Claimant Testimony) Claimant had received no prior warnings for this type of conduct, because this was the first time he had threatened to work half as hard. (Keegan Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

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.

Iowa Admin. Code r. 871-24.32(1)a provides:

- 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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Insubordination does not equal misconduct if it is reasonable under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.* 367 N.W.2d 300 (Iowa Ct. App. 1985). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. *Woods v. Iowa Dep't of Job Serv.*, 327 N.W.2d 768, 771 (Iowa 1982). Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985).

It is the duty of the administrative law judge, as the trier of fact, 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 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. *Id.* 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 appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find claimant's testimony that he told employer he would only work \$22.00 per hour worth – not that he would work half as hard – to lack credibility. A threat to only put forth \$22.00 per hour worth of effort when being paid \$22.00 per hour is illogical.

Employers' implied request that all employees put forth their full effort in performing their job duties is reasonable. An employee threatening to only put forth half an effort when performing his job because he believes he is entitled to a raise in pay is not reasonable. Claimant's comments on August 9, 2019 and August 12, 2019 manifested his intention to disobey a future reasonable instruction by employer for claimant to put forth his full effort in completing his job duties. Employer has met its burden of proving claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

DECISION:

The September 5, 2019 (reference 02) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

acw/rvs

If you wish to change the employer's address of record, please access your account at:

<https://www.myiowaui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v=mpCM8FGQoY>