

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LANCE D SATTERLEE
Claimant

JOHN DEERE COMPANY
Employer

APPEAL 18A-UI-08984-AW-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/05/18
Claimant: Appellant (1)

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin Code r. 871-24.32(1) – Discharge for Misconduct

STATEMENT OF THE CASE:

Lance Satterlee, Claimant, filed an appeal from the August 20, 2018, (reference 01) unemployment insurance decision that denied benefits because he was discharged from work with John Deere Company for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on September 13, 2018 at 11:00 a.m. Claimant participated. Witnesses for the claimant included Tim Cummings, Union Committeeman, and Mike Oberhouser, Shop Chairman. Employer participated through Michael Marquart, Labor Relations. No exhibits were admitted.

ISSUE:

Whether Claimant's separation was a discharge 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 a laborer at John Deere Company from May 20, 2002 until his employment ended on August 1, 2018. (Marquart Testimony) As a part of claimant's job, he uses a company email account on a daily basis to perform his job duties. (Marquart Testimony; Claimant Testimony)

Employer has an electronic resource policy, which provides that all electronic resources must be used in a professional manner and only for business or permitted incidental personal use. (Marquart Testimony) The policy also states that an employee's use of electronic resources shall not interfere with or disrupt others or waste company resources. (Marquart Testimony) All employees were required to review the electronic resource policy on an annual basis. (Marquart Testimony) If the policy was not reviewed, the employee's access to his company email account would be suspended. (Marquart Testimony) On June 21, 2018, claimant attended training on the electronic resource policy, which included instruction on inappropriate content and professionalism. (Marquart Testimony; Claimant Testimony; Cummings Testimony)

On July 25, 2018 or July 26, 2018, a coworker reported to the compliance hotline that she had received emails from claimant between September 18, 2017 and July 5, 2018 that she believed were inappropriate. (Marquart Testimony) In the emails sent from his company email account, claimant expresses his interest in dating his coworker, comments on her dissatisfaction with her current romantic relationship, offers to take her for a motorcycle ride and references taking a long, hot bath. (Marquart Testimony) On two occasions, claimant refers to a past incident that was sexual in nature without providing details. (Marquart Testimony; Cummings Testimony)

Upon receiving the complaint from the compliance hotline, human resources reviewed the emails in question. (Marquart Testimony) At this time, employer found an email that claimant sent on July 5, 2018 from his work email account to a woman who is not a John Deere employee, in which claimant tells the woman about himself and asks the woman if she would like to go out on a date. (Marquart Testimony) After reviewing claimant's emails, human resources held a hearing with claimant and his union representative on August 1, 2018. (Marquart Testimony) Claimant confirmed that he sent the emails. (Marquart Testimony) Employer terminated claimant's employment on August 1, 2018 due to violation of the company's electronic resource policy. (Marquart Testimony)

The employer's union contract outlines progressive discipline "for good and just cause," that includes a written warning, three-day suspension, two-week suspension, 30-day suspension and termination. (Cummings Testimony) However, disciplinary action is ultimately at the employer's discretion. (Marquart Testimony)

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.

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 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:

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 of misconduct 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Gimbel v. Emp't Appeal Bd.*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). The focus is on deliberate, intentional, or culpable acts by the employee. *Id.* Disqualification for a single misconduct incident must be a deliberate violation or disregard of standards of behavior which employer has a right to expect. *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). A collective bargaining agreement requiring warnings before a discharge is irrelevant to a determination of job misconduct. *Crane v. Iowa Dep't of Job Serv.*, 412 N.W.2d 194 (Iowa Ct. App. 1987).

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.*

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 the employer's version of events to be more credible than the claimant's version of those events. Claimant received training regarding the electronic resource policy and knew that his company email account was to be used in a professional manner for business or permitted incidental personal use. Claimant testified that the emails exchanged with his coworker were consensual and that his coworker did not ask him to stop emailing her and only reported the emails to human resources after her employment ended. (Claimant Testimony) Notwithstanding claimant's belief that his emails were not inappropriate, the emails were certainly not professional or business-related. While "permitted incidental personal use" is not defined, it is unreasonable to believe it includes soliciting dates and sharing personal information that would make a coworker or another female recipient uncomfortable.

Claimant knew, or should have known, the company's electronic resource policy; yet, claimant used his company email account to solicit dates with two women. One such email was sent on July 5, 2018 – just two weeks after attending training on the company's electronic resource policy. Claimant's emails were a deliberate violation or disregard of standards of behavior which John Deere has a right to expect from its employees. Claimant's emails are disqualifying misconduct. Benefits are denied.

DECISION:

The August 20, 2018, (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times his weekly benefit amount.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs