

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARIO L BRITTON
Claimant

QUAD CITY LAWN & LANDSCAPE INC
Employer

APPEAL NO. 18A-UI-00110-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/26/17
Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 22, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 30, 2018. Claimant participated personally and with witness Deborah Gonzales. Employer participated by David McKinney and Scott Hageman. Claimant's Exhibits A-B were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on July 6, 2017. Employer discharged claimant on July 7, 2017, because claimant allegedly was insubordinate to employer by continuing to work when employer had told him to clock out for the day.

On July 5, 2017, employer told claimant that he and his crew could go home early for the day after they finished mowing an apartment complex. Employer said at the time he was having a repaired mower dropped by for claimant. Claimant stated that the repaired mower never arrived. Additionally, the claimant stated that it rained that afternoon, and the only mower he had to mow certain areas would damage them with the wet grass. Claimant also stated that the apartment complex manager told claimant not to mow using the only mower he had – as the other mower hadn't been brought over. Claimant and his crew left that day without finishing the apartment complex. Claimant said he tried to contact his supervisor to alert him of the situation, but the supervisor didn't answer the phone.

The next day when claimant came to work, his supervisor was very upset to find out that claimant hadn't completed the apartment complex before ending up for the day. The supervisor got into a heated argument with claimant who was complaining that he was doing what the apartment manager told him, and he hadn't had the other mower delivered. The supervisor was upset that the mowing hadn't been completed and told claimant to clock out for the day.

The supervisor said claimant told him, “fuck you!” and drove off to his work. Claimant stated that clocking in and out of work was done through tablets, and as the supervisor hadn’t clocked claimant out of work, he just did his work for the day. Claimant denied saying “fuck you” to his supervisor, and stated that he wasn’t driving the car, so he wasn’t in control of it being driven off by a third party.

When claimant came back to work the next day he was terminated.

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. 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. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

It is the duty of the administrative law judge as 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 may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. 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*, 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 believable evidence; 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. *State v. Holtz*, Id. Here, employer's only witness to the particulars of the arguments did not testify in a way that gave confidence in his credibility. He was upset when he first met with claimant on July 6, 2017. Workers were sitting around rather than preparing for the day. Then the supervisor found out that claimant did not finish the assigned job from the day before. It is reasonable to think it was the supervisor who exploded towards claimant. He admitted he told claimant to go home. His explanation about the claimant being insubordinate by not leaving, didn't make sense given employer's ability to control the situation. Rather, the administrative law judge finds claimant's testimony more believable that he was not insubordinate and his supervisor acted in an unprofessional manner towards him. Additionally, employer could easily have called another co-worker as a witness to support supervisor's claims, but chose not to do so.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning insubordination. The last incident, which brought about the discharge, fails to constitute misconduct because employer did not prove misconduct. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated December 22, 2017, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn