

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

JOHN D MILLER
Claimant

APPEAL NO. 19A-UI-04321-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERBRAND CABINETS INC
Employer

OC: 12/16/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Masterbrand Cabinets (employer) appealed a representative's May 15, 2019, decision (reference 02) that concluded John Miller (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 20, 2019. The claimant participated personally. The employer participated by Deborah Tyler, Senior Human Resources Generalist. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 4, 2017 as a full-time builder. The claimant signed for receipt of the employer's Standards of Business Conduct on December 4, 2017, and the Local Waterloo Operations Policies on January 4, 2018.

On October 30, 2018, the employer issued the claimant a final written warning for not using the proper channels of communication and intimidating behavior. The warning indicated that further infractions could result in the claimant's termination from employment. On March 5, 2019, the employer gave the claimant a verbal coaching for substandard work. On March 19, 2019, the employer gave the claimant a verbal coaching for substandard work and disrespectful behavior. The employer told the claimant he could be terminated for further infractions.

The claimant thought his lead worker was watching him. He saw the lead worker follow him to the time clock and the restroom. The claimant was careful about following the lead worker's rules. On April 9, 2019, the lead worker told the claimant to sand down bands attached to a

paint panel. That same day, co-worker Hansen approached the claimant asking for help finding a part. The claimant said, "My lead told me to do this. When I'm finished I'll come help you out." He continued working on his job and talking to another employee. She walked away. When the claimant completed his work, five to fifteen minutes later, he sought her out and found another worker helping her.

Co-worker Hansen told a supervisor that the claimant refused to help her. She reported the claimant as saying, "I'm supposed to sand. That's what my lead said. If you need to talk to me, go ask my lead." Co-worker Hansen told the supervisor that she needed the part quickly for a FedEx shipment. The employer investigated Co-worker Hansen's allegations.

On April 11, 2019, the employer terminated the claimant for violating a "Business Conduct Policy, failure to maintain proper channels of communication, Teamwork and Respect". The policy was not provided to the claimant.

The claimant filed for unemployment insurance benefits with an effective date of December 16, 2018. The employer provided the name and number of Shirley Woods, a Talx UCM Services Representative, as the person who would participate in the fact-finding interview on May 8, 2019. The fact finder called Ms. Woods but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not submit the specific rule or policy that the claimant violated which caused the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct

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).

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on April 9, 2019. In this instance, the claimant was following the instructions of his supervisor and performing work. Not following the lead worker's instruction was a clear violation of policy.

The policy was not clear about termination of an employee for a request to wait a few minutes or speak to a lead. The claimant was willing to help a co-worker if she either waited or spoke to his supervisor. The co-worker was unwilling to do either. Her actions did not allow for teamwork. The claimant's actions were reasonable under the circumstances. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

The testimony of the employer and the claimant was not the same. The administrative law judge finds the testimony of the claimant to be more credible. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose to read statements into the record. The statements do not carry as much weight as live testimony because the testimony is under oath and the witness can be questioned. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct.

DECISION:

The representative's May 15, 2019, decision (reference 02) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs