

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICKY W BRENNAN
Claimant

US POSTAL SERVICE
Employer

APPEAL 15A-UCFE-00031-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 6, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 1, 2015. Claimant participated. Attorney TJ Hier participated on behalf of claimant. Employer participated through postmaster, Tammy Wakely and Kyle Helm.

ISSUE:

Was the claimant suspended for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a regular rural carrier from June 21, 2008, and was suspended from employment on October 13, 2015.

Claimant remains employed and was involuntarily placed on a leave of absence on October 13, 2015. On October 13, 2015, when claimant returned from his route, Ms. Wakely asked claimant to take his personal stuff home. Claimant told Ms. Wakely that he did not have too. Claimant asked if Ms. Wakely wanted to pick a fight. Ms. Wakely told him no, but she expected claimant to do his job and that the case was not his property. Claimant told Ms. Wakely “you need to fix your [f@\$king] equipment.” Claimant then pulled off a strip from the case and threw it at Ms. Wakely. The strip hit Ms. Wakely, but did not cause any injury. Ms. Wakely told claimant he needed to leave and not come back until notified. Claimant told Ms. Wakely he cannot because his job was not done. Ms. Wakely told claimant he needed to leave. Claimant refused to leave and yelled and screamed some more. Claimant then told Ms. Wakely he cannot leave until he “filled out a [f@\$king] leave slip.” Ms. Wakely requested claimant to leave and if he did not she would call the authorities. Claimant refused to leave again. Ms. Wakely called the police and claimant flipped her off and walked outside. The police sent a deputy to the post office. Before the deputy arrived claimant left the area. Claimant told the deputies he threw

keys inside, but the employer never found the keys. The employer changed the locks on the building.

The employer sent a letter to claimant on October 13, 2015 that he was on emergency placement (equivalent of a suspension) pending the investigation. Emergency placement is pursuant to the union contract. The suspension is unpaid and still ongoing.

The employer has a zero tolerance for work place violence, including threats. It is a written policy. Claimant was aware of the policy and it is posted on a bulletin board. The employer also had a talk with the employees about civility in the workplace in 2015 prior to the October 13, 2015 incident; the talk informed employees they needed to watch their language.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment for 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 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).

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

(4) Report required. The claimant's statement and the 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(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The employer has the burden of proving disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990).

The employer has a zero tolerance policy regarding work place violence, including threats. Claimant was aware of this policy. The employer also had a talk with its employees regarding civility in the workplace prior to October 13, 2015. Claimant's argument that he was assaulted and Ms. Wakely used profanity towards him is unpersuasive. When claimant initially testified to what the note in his case stated, he exaggerated and stated the note told him to "clean up [his] damn case." When claimant was asked regarding what the note exactly said he testified it stated, "This is the last time you can have your personal stuff in your case." The word "damn"

did not actually appear on the note. The employer presented substantial and credible evidence that on October 13, 2015, claimant used profanity towards the postmaster Ms. Wakely and threw a strip from a case that hit Ms. Wakely. Claimant made multiple statements towards Ms. Wakely using profanity. Claimant told Ms. Wakely "you need to fix your [f@\$king] equipment." Claimant also told Ms. Wakely he cannot leave until he "filled out a [f@\$king] leave slip." Claimant also refused to leave after being requested to leave multiple times. Claimant only left after law enforcement was contacted. Furthermore, claimant threw a strip at Ms. Wakely and the strip hit Ms. Wakely. It is immaterial that the strip did not cause any injury to Ms. Wakely. The employer has a duty to protect its employees, including Ms. Wakely. Claimant's conduct of throwing a strip at Ms. Wakely is directly against the best interests of the employer and its employees.

Claimant's conduct of throwing an object at and causing it to hit the postmaster and using profanity directly at Ms. Wakely is considered disqualifying misconduct, even without prior warning. Benefits are denied.

DECISION:

The November 6, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant was suspended from employment for misconduct. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css