

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHAEL R ENDERSBE**  
Claimant

**DEERE & COMPANY**  
Employer

**Case No. 21IWDUI2063**

**APPEAL 21A-UI-07050**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 3/5/21  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant filed a timely appeal from the March 5, 2021 (reference 01) unemployment insurance decision denying benefits on the basis that the claimant had been discharged from work on January 27, 2021, for causing dissension among other employees. The parties were properly notified of the hearing. A telephone hearing was held on April 30, 2021. The claimant, Michael R. Endersbe, participated personally. Present on behalf of the claimant was witness Curtis Templeman, Shop Chairman at John Deere. The employer, Deere & Company, did not participate in the hearing.

Neither party submitted exhibits. Official notice was taken of the documents in the administrative file.

**ISSUES:**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for Employer, John Deere, as an assembler in department 40A assembling the parts on the engine for tractors. Claimant worked full-time and had a set schedule of 7:00 a.m. to 3:30 p.m. Claimant began working at Employer on August 16, 2010.

On or about January 21, 2021, Claimant approached his direct supervisor, Michelle Brown (Brown), to discuss an unexcused absence that she had marked for the previous day. She told Claimant that he would need to speak to Human Resources about it. Claimant went to walk by Brown and as he was doing so, he brushed against her clipboard. The clipboard bumped into Brown.

Claimant was sent home from work on that day. The Employer conducted an investigation. Some witnesses stated that Claimant had bumped into Brown's clipboard while one witness did not see Claimant make contact with the clipboard. None of the employees believed that it was a push.

About a week later, on January 27, 2021, the Claimant was called by Employer for a meeting. At the meeting, the Employer did not state a policy underlying Claimant's discharge. The Employer stated that Claimant had come into physical contact with a team leader. Claimant did not have any discipline on his record for at least the three years prior to this incident.<sup>1</sup> Claimant was discharged during the meeting.

#### **REASONING AND CONCLUSIONS OF LAW:**

There is no dispute that Claimant was discharged from his employment as an assembler with the Employer. This case, therefore, will be evaluated pursuant to Iowa Code § 96.5(2)a rather than § 96.5(1). For the reasons that follow, the administrative law judge concludes Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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 defines "misconduct" in this context as:

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).

As recently clarified by the Iowa Supreme Court: "The standard an employer must meet to sustain disqualification for unemployment benefits is more demanding than the standard ordinarily required to support a termination of employment for just cause." *Irving v. Employment Appeal Bd.*, 883 N.W.2d 179. 195-96 (2016); see also *Gaborit v. Employment Appeal Bd.*, 743

---

<sup>1</sup> The discipline track only goes back three years pursuant to the Collective Bargaining Agreement.

N.W.2d 554, 558 (Iowa Ct. App. 2007) (violation of known work rule does not establish *per se* disqualification from receiving unemployment compensation). "Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment." *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). The employer has the burden of proof in establishing disqualifying job misconduct. *Id.* at 11.

Here, there is no dispute Claimant was fired because the Employer believed that he had made physical contact with his supervisor. Claimant brushing against his supervisor's clipboard does not establish that he acted with "willful or wanton disregard" of his employer's interests creating a "material breach" of his employment duties. Nor has Employer proven he acted with wrongful intent or evil design. See, e.g., *Billingsley v. Iowa Dep't of Job Servs.*, 338 N.W.2d 538, 540 (Iowa Ct. App. 1983) (distinguishing between standard for discharging an employee for known violation of work rules and standard to establishing misconduct sufficient to deny unemployment compensation). Rather, Claimant testified credibly that he did not push his supervisor and did not recall even brushing up against her clipboard. Prior to this incident, Claimant did not have any other occurrences, and Employer did not provide a reason why they determined that Claimant would be discharged versus a lower level discipline. Additionally, Templeman testified that the investigation conducted by the Employer did not clearly show that Claimant had intended to make physical contact with his supervisor or that he had even actually done so.

To disqualify Claimant from receiving unemployment benefits, it was Employer's burden to prove Claimant acted with willful or wanton disregard of the Employers' interest, or exhibited recklessness or carelessness of such a degree as to suggest wrongful intent or evil design. No such evidence exists in the present case. Accordingly, the representative's decision must be reversed.

**DECISION:**

The March 5, 2021 unemployment insurance decision is **REVERSED**. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Alla R. Mintzer  
Administrative Law Judge

May 10, 2021  
Decision Dated and Mailed

ARM/aa

cc: Michael R. Endersbe, Claimant (by First Class Mail)  
Deere & Company, Employer (by First Class Mail)  
Nicole Merrill, IWD (By Email)  
Joni Benson, IWD (By Email)