

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALLAN P HEEBNER
Claimant

AG PARTNERS LLC
Employer

APPEAL 21A-UI-19677-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/11/21
Claimant: Appellant (2)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Code § 96.4(3) - Ability to and Availability for Work
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Allan Heebner, filed an appeal from the August 24, 2021, (reference 01) unemployment insurance decision that denied benefits based upon finding claimant was discharged for getting his license suspended when it was needed for employment. The parties were properly notified of the hearing. A telephone hearing was held on October 27, 2021. The claimant participated. The employer, AG Partners LLC, participated through Lucas Kline. Judicial notice was taken of the administrative record.

ISSUES:

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

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds: Claimant was employed full time as an operations technician from April 17, 2017, until his last day of work, when he was discharged from employment on April 13, 2021 by Mr. Kline, vocation manager, and Ms. Melissa Barrack, director of human resources.

The reason for the termination was claimant's arrest over the April 10-11 weekend and being charged with driving under suspension, possession of methamphetamine and eluding and this meant the employer believed they could no longer trust the claimant. Employer specifically denied that the discharge had anything to do with claimant's OWI arrest from July 3, 2020, as they had worked around his suspended license issue.

Employer has an employee handbook. Claimant was never provided a copy of the handbook, nor provided with a link to the handbook to view it online. Neither claimant nor the employer could

point to what policy claimant violated. They are both unaware of any policy regarding being arrested or charged or trustworthiness. Claimant was not aware that his job was in jeopardy.

Employer agreed that the arrest and the charges did not impact claimant's ability to do the work. Employer said that if claimant was convicted of the new driving under suspension charge, given claimant's OWI suspension, that the claimant would no longer be insurable under the employer's insurance policy to be able to drive the employer's vehicles. Claimant was currently insurable, just suspended and the suspension was being worked around. The current suspension played no role in the termination. The possibility of not being insured did come into play, but the employer had no explanation as to why they did not just wait to see what convictions, if any, resulted to determine whether claimant's suspension ended or was lengthened and then whether he would remain insurable or not be insurable. At the very end of the hearing, employer testified to policy #7 regarding acts with drugs that would violate company policy. The acts testified to were acts a person has done. Currently, claimant is charged with (accused of) doing acts; but there is no conviction of the charge. Therefore, there are no acts that have been done, merely allegations of acts.

Claimant's job duties still needed done, and all of the work that he performed has been absorbed into the work load of existing employees. But for claimant's termination, there was work for him to have performed that claimant was able and available to do. From the time of claimant's discharge to the time of this hearing, claimant was not ill, did not leave the area for any trips and has remained otherwise able to work, available to work and states he has been actively seeking work. Regarding his suspended license, claimant has a girlfriend that will drive him to work if work is found, or he will ride a bicycle or even walk if needed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Claimant was not provided the policy handbook or given access to same. Claimant was not aware his job was in jeopardy. Employer acknowledges that the charges do not impact his ability to perform the work. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided claimant is otherwise eligible.

Claimant is able and available for work. Depending upon the disposition of the pending criminal charges, that might change in the future, but from the testimony and the weekly claim information, claimant is able and available.

DECISION:

The August 24, 2021, (reference 01) unemployment insurance decision is **REVERSED**. 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.



Darrin T. Hamilton
Administrative Law Judge

November 15, 2021
Decision Dated and Mailed

dh/scn