

UNEMPLOYMENT INSURANCE APPEALS BUREAU

JOHN A BROWN
Claimant

RITE HITE DOORS INC
Employer

APPEAL 22A-UI-01539-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/31/21
Claimant: Appellant (2)

Iowa Code § 96.2(A) - Discharge for Misconduct
Iowa Code § 96.5(1) - Voluntary Quit
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant/appellant, John Brown, appealed the December 8, 2021, (reference 01) unemployment insurance decision that denied unemployment insurance benefits due to an October 11, 2021 discharge for theft of company property. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for February 8, 2022. Claimant participated. The employer, Rite-Hite Doors, Inc., did not participate. Judicial notice was taken of the administrative file. Claimant's Exhibits 1 was admitted. Employer sent an email at 8:23AM to UIAppealsHelp, which forwarded the email to the undersigned at 9:00AM. The email advised the employer is unable to participate in the appeal hearing due to a conflict with another meeting they are unable to reschedule. No reference is made as to what the other meeting is nor is any request made for a postponement. They make statements about the matter at hand and have an attachment for documents for the hearing. However, exhibits are required to be submitted prior to the hearing and a copy provided to the other side. This is submitted the day of and no proof that claimant was provided the documents. Employer's submission is not entered into the record, and information in the email regarding addressing the merits of the case are stricken and not considered.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant was employed full-time, with a varied schedule as a shipping receiving materials handler. He started work with employer approximately September 22, 2014, and his last day worked was October 11, 2021, when employer discharged claimant for dishonesty about his timecard, attempting to get paid for hours not worked. Employer has a handbook that claimant got a copy of when he started.

October 7, 2021, claimant received notification that his son was involved in an automobile accident. Claimant went to go address that issue. At approximately 7:35AM, claimant sent a text to his employer to advise that he needed to leave work due to his son being in a car accident and thought he could be back in about three hours. Claimant did not make it back on the 7th, nor otherwise communicated with employer. On October 8th, there was a conversation between claimant and Chris Schruppf regarding claimant's timecard. Claimant advised that in his rush to get to his son, he forgot to clock out from work and was unable to fix his timecard. Schruppf and claimant discussed what time claimant left.

Employer's termination letter states claimant told them 7:15am, but the video footage shows it was just after 6AM and that being dishonest in the hours worked was an attempted theft of being paid for time not worked, not quite seventy-five minutes (just after 6AM when he actually left versus 7:15AM when employer stated claimant said he left). The letter states this stand alone violation is sufficient to terminate.

Claimant advised the October 8th conversation between him and Schruppf had claimant tell Schruppf that he left a little after 6AM and he does not know where the 7:15AM comes from. Any misunderstanding may have come from both of them wearing face masks, and that Schruppf has a hearing issue, wearing hearing aids. Claimant further asserts that he's not going to jeopardize his employment of just over seven years for an hour of pay. Claimant asserts he wasn't given any opportunity to set the record straight when he understood the employer thought he told them he left at 7:15AM.

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.

Iowa Admin. Code r. 871-24.1 provides:

Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

c. *Discharge*. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

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.

Employer elected to not participate in the hearing. Claimant has submitted the termination letter. Employer's understanding is claimant said he left at 7:15AM and video shows him leaving just after 6AM. Claimant's testimony denies saying he left at 7:15AM, he did text at about 7:35AM about his need to have left. Claimant's testimony is he left a little after 6AM and would not jeopardize his employment this way.


Employer had notice of the hearing and time to submit exhibits. For whatever reason, employer did not timely submit any exhibits. Furthermore, employer does not address what the conflicting meeting was, when it was scheduled, nor ask for a postponement in the hearing and attempt to establish sufficient reason to be granted a postponement.

The employer has the burden of proof to establish misconduct. Employer has failed to meet their burden of proof in establishing any theft or attempted theft. Claimant brought the timecard issue to the employer's attention, advised that he was not able to correct the matter, and when asked what time he left, advised it was shortly after 6AM. No deliberate or intentional act to commit a theft established.

While the employer may have had good reasons to let claimant go, there was no disqualify reason proven and no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

DECISION:

The December 8, 2021, (reference 01) unemployment insurance decision denying benefits is **REVERSED**. Claimant was discharged from employment on for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



Darrin T. Hamilton
Administrative Law Judge

February 28, 2022
Decision Dated and Mailed

dh/mh