

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOUGLAS BEADLE
Claimant

IOWA PREMIUM LLC
Employer

APPEAL 21A-UI-03950-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/01/20
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the January 20, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion the claimant engaged in willful misconduct. The parties were properly notified of the hearing. A telephone hearing was held on April 1, 2021. The claimant did not participate. The employer participated through Employment Manager Maria Hackenmiller. No exhibits were admitted into the record.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

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

The claimant was employed full-time as a maintenance worker from July 19, 2019, until this employment ended on October 28, 2020, when he was terminated. Employment Manager Maria Hackenmiller did not have information regarding the claimant's immediate supervisor.

The employer has a policy called Safety Guidance in its employee manual. It states that only designated employees who have received proper training such as employees in the Maintenance Department should work on machines connected to an energy source and emphasizes they should do so only after disconnecting it from its energy source. It states that failure to do so may result in discipline up to and including termination. The claimant received a copy of the employee handbook around the time of his hire.

In general, Human Resources Manager Mora and Health and Safety Manager Herman Marks conducted an investigation if an employee is suspected of violating the lockout / tag out procedure. The employee is placed on administrative leave while Ms. Mora and Mr. Marks are conducting the investigation. Given this general context, Ms. Hackenmiller believes the claimant engaged in the violation on October 23, 2020 because it was in the employer's records as his last day worked. Ms. Hackenmiller testified she did not have specific information either firsthand or second hand regarding the circumstances of the violation. As a result, the employer could not

provide any specific information other than speculation regarding when the incident occurred or any of the circumstances surrounding the incident or its investigation.

On October 28, 2020, Ms. Mora made the decision to terminate the claimant's employment because he violated the employer's lock-out/tag-out policy. Ms. Hackenmiller does not know why Ms. Mora decided to terminate the claimant after one violation; however, she stated the employer generally terminated employees after one violation of the lock-out/tag-out policy.

Ms. Hackenmiller testified she was unaware if the claimant had been disciplined in the past for similar misconduct. She was similarly unaware of other instances in which the employer terminated an employee after one violation of the lock-out/tag-out policy.

The claimant filed for unemployment with an effective date of November 11, 2020. He received \$493.00 for the week ending November 14, 2020. He received \$328.00 for the week ending November 21, 2020. The total amount of benefits he received was \$821.00.

Ms. Hackenmiller was not aware if the employer participated in the fact-finding interview or if the employer received notice of fact-finding.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to non-disqualifying conduct. Since the claimant is entitled to benefits, the issue of overpayment is moot.

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.

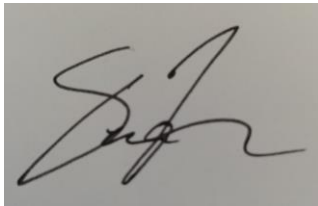
This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995).

It is the employer's burden to show the claimant engaged in willful misconduct. In order to satisfy that burden, the employer must establish the reasons for its determination and the underlying misconduct. As stated in the findings of fact, very little information was provided in this case by the employer's witness. In order for the administrative law judge to find in the employer's favor, he would have to adopt secondhand speculation of a witness that was unaware of any of the specific circumstances regarding the claimant's separation. That would be an impermissible conclusion. Benefits are granted. Since benefits are granted, the issue of overpayment is moot.

DECISION:

The January 20, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged due to a non-disqualifying reason. Benefits are granted.



Sean M. Nelson
Administrative Law Judge
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April 6, 2021
Decision Dated and Mailed

smn/lj