

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATT J HORNBUCKLE

Claimant

DAVENPORT COMMUNITY SCH DIST

Employer

APPEAL 15A-UI-05590-KC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/15

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 filed an appeal from the May 5, 2015, (reference 01) unemployment insurance decision that denied benefits based the claimant voluntarily quitting his employment. The parties were properly notified about the hearing. A telephone hearing was held on June 17, 2015. The claimant participated. The employer did not participate.

ISSUE:

Was the claimant discharged for work-related, disqualifying misconduct or did he voluntarily quit without good cause attributable to the employer?

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 first floor utility worker from September 2010, and was separated from employment on April 15, 2015, when the employer terminated his employment.

On December 17, 2014, the claimant was working at the school on a night when there was a big game. He and another employee walked by an open door where the driver's education car is parked. They saw smoke coming from a garbage can. The area had airborne sawdust that leaks out of the ducts from the woodshop. They were able to put the fire out using a hose. No damage was done to school property. They reported the situation to supervisor Joe Ward who called 911. Personnel from the Davenport Fire Department interviewed the claimant, his co-worker and Ward on the night of the fire and thereafter. An investigation was conducted. The claimant also provided statements at multiple meetings at the school regarding what happened. He underwent no disciplinary or legal actions. He received no documents of any kind about the fire. He understood the investigation was complete. He remained at work throughout the process. He was not told that his job was in jeopardy for the fire or any similar thing.

On April 15, 2015, the claimant was called to a meeting. Mike Maloney, Operational Director of the Davenport School District, told him that his job was terminated due to the seriousness of the situation involving the fire in December 2014. Maloney did not identify what the claimant did

wrong. The claimant had received no warnings that his job was in jeopardy for the fire or anything similar. Maloney gave him no documents on the date of discharge. The discharge was immediate. The claimant was surprised because he thought the matter from December 2014 was resolved. After the meeting, a member of management, told the claimant that the employer would not fight his unemployment claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason and did not voluntarily quit his employment. There is no credible evidence that the claimant quit his employment on April 15, 2015.

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer did not participate in the hearing, the administrative law judge concludes that the claimant's recollection of the events is more credible than what the employer told the claimant on the date of discharge and what it relayed at the fact-finding interview.

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." Where an employer gives seven days' notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011).

The claimant was discharged approximately four and one-half months after the act on which the employer relied to separate him from employment. The employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined.

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.

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. The claimant received no written or verbal warnings about the fire in December 2014, and no warnings for anything similar.

Because the act for which the claimant was discharged was not current and the claimant may not be disqualified for past acts of misconduct, benefits are allowed.

DECISION:

The May 5, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/pjs