

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT A HULST
Claimant

AG PROCESSING INC A COOPERATIVE
Employer

APPEAL 15A-UI-06719-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 1, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 13, 2015. Claimant participated. Employer participated through Operations Manager Travis Robinson and employer representative, Klaren Bentley. Employer Exhibit 1 was offered into evidence, but was not admitted. Claimant denied receiving the exhibit.

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: Claimant was employed full-time as a grain dryer/operator from December 21, 2011, and was separated from employment on May 5, 2015, when he was discharged.

On May 5, 2015, claimant was responsible for pulling soybean samples. To obtain the samples, claimant had been trained to use a cup that is attached to the end of a plastic handle. The employer requires this to ensure employee safety. The cup is placed near an auger that is moving the soybeans. If an employee gets his hand too close, serious injury may result. On May 5, 2015, claimant did not use the cup that is attached to the end of a plastic handle. This is a safety violation of the employer's plant work rules. Claimant was suspended for this safety violation and then discharged the same day (May 5, 2015).

Claimant had received two prior safety violation warnings. On January 30, 2015, claimant received a final written warning and a three-day suspension for a safety violation that occurred on January 29, 2015. Claimant signed for the written warning. The written warning explained that a future violation may result in claimant's discharge. Claimant testified he did not believe his job was in jeopardy. However, another employee was discharged prior to this incident for this same conduct. Claimant also received a verbal warning for a safety violation in January 2014. The employer documented this warning in written and gave a copy to claimant.

The employer has plant work rules in the employee handbook, which claimant did receive.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

Claimant was trained to use the cup with the plastic handle for safety reasons. Claimant did not use the cup with the plastic handle, which is a safety rule violation. Claimant had been warned on two prior occasions regarding safety rule violations. The administrative law judge does not find claimant's argument persuasive that he did not know his job was in jeopardy after the January 29, 2015 safety rule violation. Claimant was issued a "final" written warning and a three-day suspension from the January 29, 2015 safety rule violation, which also detailed that another violation may result in termination. Furthermore, claimant acknowledged that just prior to the January 29, 2015 incident, another employee was discharged for committing the same offense.

The employer's safety rules are in place to protect claimant and other employees. Claimant's repeated failure to safely perform his job duties after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a. The employer has presented substantial and credible evidence that claimant violated the employer's plant rules after having been warned. This is disqualifying misconduct. Benefits are denied.

DECISION:

The June 1, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs