

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEAN A SCHULTZ
Claimant

OZARK AUTOMOTIVE DISTRIBUTORS INC
Employer

APPEAL 21A-UI-08853-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/17/21
Claimant: Respondent (1)

Iowa Admin. Code r. 871-24.32(1) – Discharge for Misconduct

STATEMENT OF THE CASE:

On March 26, 2021, Ozark Automotive Distributors Inc (employer/appellant) filed an appeal from the March 17, 2021 (reference 02) unemployment insurance decision that allowed benefits based on a finding claimant was discharged on January 19, 2021 without a showing of misconduct.

A telephone hearing was held on June 14, 2021. The parties were properly notified of the hearing. Employer participated by Store Manager Caitlyn Cox. Dean Schultz (claimant/respondent) did not register a number for the hearing or participate.

Official notice was taken of the administrative record.

ISSUE(S):

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

FINDINGS OF FACT:

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

Claimant's first day of employment was October 28, 2020. Claimant worked for employer as a full-time parts specialist. Claimant's immediate supervisor was Cox. The last day claimant worked on the job was January 19, 2021. Claimant was discharged by Cox on that date.

Claimant was discharged during a 90-day probationary period due to issues with his attitude and attendance. The most recent incident occurred on January 14, 2021, when Cox counseled claimant regarding his attitude and he then declined to return to work after lunch. He did return to work after that date. The unemployment insurance system shows claimant has not received benefits since the date of discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the March 17, 2021 (reference 02) unemployment insurance decision that allowed benefits based on a finding claimant was discharged on January 19, 2021 without a showing of misconduct is AFFIRMED.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 provides in relevant part:

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).

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). What constitutes misconduct justifying termination of an employee and what

misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).


Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Claimant was discharged due to issues with his attitude and attendance during a probationary period. This is best characterized as a separation during a trial period due to failing to meet employer's standards rather than a discharge for substantial, job-related misconduct. Benefits are therefore allowed, provided claimant is not otherwise disqualified or ineligible.

Because claimant has not received benefits since the date of discharge, the issues of whether claimant has been overpaid benefits and whether employer should be charged need not be addressed.

DECISION:

The March 17, 2021 (reference 02) unemployment insurance decision that allowed benefits based on a finding claimant was discharged on January 19, 2021 without a showing of misconduct is AFFIRMED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
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June 29, 2021
Decision Dated and Mailed

abd/lj