

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DASH M CARPENTER
Claimant

APPEAL 20A-UI-01993-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS MANUFACTURING CO
Employer

**OC: 10/13/19
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On March 4, 2020, Sears Manufacturing Co (employer) filed an appeal from the February 25, 2020 (reference 01) unemployment insurance decision that determined Dash Carpenter (claimant) was eligible to receive unemployment insurance benefits.

A telephone hearing was held on April 20, 2020. The parties were properly notified of the hearing. Employer participated by Hearing Representative Beverly Maez and Manager Trisha Taylor. Claimant participated personally.

Employer's Exhibits 1-7 were admitted. 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?
- II. Was the claimant overpaid benefits? Should claimant repay benefits or should employer be charged due to employer participation in fact finding?

FINDINGS OF FACT:

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

Claimant worked for employer as a full-time assembler. Claimant's first day of employment was February 5, 2018. The last day claimant worked on the job was February 6, 2020. Claimant's immediate supervisor was Vince Vrana. Claimant separated from employment on February 6, 2020. Claimant was discharged on that date.

Taylor discharged claimant for violating employer's violence in the workplace policy. See Exhibit 1. That policy prohibits making threatening gestures or remarks and intimidating or harassing another person, among other things. See Exhibit 7.

Claimant and a coworker were involved in a disagreement on February 4, 2020. The coworker involved brought a complaint to management that afternoon, after claimant had gone home. The coworker and several other coworkers gave written statements that they felt claimant's conduct during the disagreement and at other times was threatening. See Exhibits 2, 4, 5, 6.

The following day, February 5, Taylor attempted to speak with claimant about what happened February 4. Claimant was uncooperative and insubordinate during this conversation, including yelling at Taylor; calling her a racist; and using vulgarity. Claimant stated the coworker had actually threatened him, and that others had fabricated things because they did not like him. After trying unsuccessfully to get claimant to calm down, Taylor instructed him to leave. Claimant told Taylor she could not tell him to leave and only left after Vrana instructed him to do so. See Exhibit 3.

After these incidents, Taylor determined a hearing with management and a union representative was necessary. That group was discussing the events leading to the hearing when claimant came in to complain about the coworker from the February 4 incident not working. Vrana went to investigate and then later returned with claimant. When claimant returned, he was again behaving erratically and combatively. He was yelling at others, refused to sit down, and refused to leave the building when ultimately asked to do so. Taylor felt threatened by this behavior and called the police to assist. Claimant gathered some items, yelling at coworkers while doing so. After being told he was discharged, claimant left.

Claimant and another coworker had a disagreement in December that led to discipline. It was unclear who the aggressor was in that situation. However, claimant was warned at that time that his job was in jeopardy if similar incidents occurred in the future.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$446.00 for a total of eight weeks, from the benefit week ending February 22, 2020 and continuing through the benefit week ending April 11, 2020. The total amount of benefits paid since the separation event is \$3,568.00.

Employer provided live testimony at the fact-finding hearing, as well as the exhibits set forth above.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the February 25, 2020 (reference 01) unemployment insurance decision that found claimant eligible for benefits is REVERSED.

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

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).

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 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).

It is the duty of the administrative law judge as 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 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. *Id.* 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 believable evidence; 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. *Id.*

The administrative law judge found Taylor's testimony and the supporting documentation presented by employer to be more credible than claimant's testimony. Claimant was evasive and argumentative at times during the hearing. Claimant also elevated his voice and interrupted the administrative law judge and others while they were speaking. In short, claimant's conduct during the hearing lends credence to the allegations made by employer as to claimant's conduct leading to his discharge. Furthermore, the administrative law judge does not find believable claimant's contention that the allegations made by Taylor, as well as the statements offered by his coworkers, were all fabricated due to a personal dislike of him. The conflicting testimony was resolved accordingly and is reflected in the findings of fact made above.

Claimant was discharged due to repeated violations in short succession of employer's policy prohibiting workplace violence. His conduct was threatening, intimidating, insubordinate, and generally inappropriate. He had previously been warned that conduct of this nature would place his job in jeopardy. Despite this warning, claimant chose to conduct himself in a manner that disregarded the standards of behavior which the employer had the right to expect of him and other employees. This constitutes a current act of substantial job-related misconduct such that he is disqualified from receiving benefits.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

- a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the

overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$446.00 for a total of eight weeks, from the benefit week ending February 22, 2020 and continuing through the benefit week ending April 11, 2020. The total amount of benefits paid since the separation event is \$3,568.00. Because the administrative law judge now finds claimant ineligible for benefits, he has been overpaid benefits in that amount.

Employer did participate in the fact-finding interview within the meaning of Iowa Admin. Code r. 871-24.10 by providing live testimony at the fact-finding hearing, as well as the exhibits set forth

above. Therefore, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information> .

DECISION:

The February 25, 2020 (reference 01) unemployment insurance decision that found claimant eligible for benefits is REVERSED. Claimant is disqualified from receiving benefits until he has earned wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Claimant has been overpaid benefits in the amount of \$3,568.00. Benefits shall be recovered. The charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.



Andrew B. Duffelmeyer
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April 22, 2020
Decision Dated and Mailed

abd/scn