

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRIS B QUIRK
Claimant

APPEAL 19R-UI-00262-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SCRANTON MANUFACTURING COMPANY
INC**
Employer

**OC: 11/04/18
Claimant: Respondent (2)**

Iowa Code § 96.5(2) – Discharge for misconduct
Iowa Code § 96.3(7) – Payment – Overpayment
Iowa Admin. Code r. 871-24.32 – Discharge for misconduct
Iowa Admin. Code r. 871-24.10 – Payment – Employer participation in fact-finding interview

STATEMENT OF THE CASE:

Scranton Manufacturing Company, Inc., Employer, filed an appeal from the November 26, 2018 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 28, 2019 at 9:00 a.m. Claimant participated. Employer participated through Danielle Anderson, Human Resources Coordinator, and Joel David, Mounting Department Supervisor. No exhibits were admitted. Official notice of the administrative record was taken.

ISSUES:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.
Whether claimant was overpaid benefits.
Whether claimant should repay benefits and/or whether employer should be charged due to participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assembler from August 16, 2017 until his employment with Scranton Manufacturing Company, Inc. ended on November 2, 2018. (Anderson Testimony) Claimant's direct supervisor was Joel David. (Anderson Testimony) Claimant's schedule was Monday through Friday from 6:00 a.m. until 2:30 p.m. (Anderson Testimony)

The employer has a gross misconduct policy, which prohibits leaving without management approval. (Anderson Testimony) The gross misconduct policy states that an employee will be suspended for three days without pay for a first offense and will be terminated, after management review, for a second offense. (Anderson Testimony) The policy is stated in the employee handbook. (Anderson Testimony) Claimant received a copy of the handbook. (Claimant Testimony)

Claimant left work early without approval on March 29, 2018 and received a three-day suspension without pay. (Anderson Testimony) Claimant received a written warning, which stated another violation of the gross misconduct policy may result in further discipline up to and including termination. (Anderson Testimony) Claimant signed and received a copy of the warning. (Anderson Testimony)

On October 31, 2018, claimant left work an hour early due to illness. (Claimant Testimony) Claimant informed a coworker that he was leaving early and completed a leave form, but did not clock out or obtain manager approval. (Claimant Testimony) Claimant alleges he did not inform or obtain approval from a manager because his two supervisors were out of the office that day. (Claimant Testimony) Claimant alleges he did not attempt to contact his supervisors via telephone because he did not have a working telephone. (Claimant Testimony) Claimant did not inform human resources or other management personnel, an alternate means of notification that claimant had used in the past. (Anderson Testimony) When claimant returned to work on November 2, 2018, employer terminated claimant's employment for violation of the employer's gross misconduct policy. (Anderson Testimony)

The administrative record reflects that claimant filed for and has received unemployment insurance benefits in the gross amount of \$1,800.00, since filing a claim with an effective date of November 4, 2018. The administrative record further reflects employer participated in the fact-finding interview through Deb Mauricio, Human Resources Manager; Joel David, Supervisor; and Danielle Anderson, Human Resources Coordinator.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

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 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(1)(a) provides:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and 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 determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Gimbel v. Emp't Appeal Bd.*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). The focus is on deliberate, intentional, or culpable acts by the employee. *Id.*

It is the duty of the administrative law judge, as the trier of fact, 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 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. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I 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. I find the employer's version of events to be more credible than the claimant's version of those events.

Claimant left work without management approval in violation of a known company rule after receiving a warning and suspension for the same action seven months prior. Claimant knew or should have known that his job was in jeopardy. Claimant's reasons for not notifying his employer that he was leaving work early are not credible. Claimant knew that he could inform human resources or other management personnel – an option he exercised in the past – but chose not to do so. Claimant's second occurrence of leaving work without approval shows an intentional and substantial disregard of employer's interests and the standards of behavior employer had a right to expect of him. Claimant's action of leaving work without approval on October 31, 2018 is disqualifying, job-related misconduct. Benefits are denied.

For the reasons that follow, the administrative law judge concludes the claimant has been overpaid benefits, the claimant must repay those benefits, and the employer's account will not be charged.

Iowa Code § 96.3(7)(a)-(b) provides:

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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(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.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This

subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

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.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant.

Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial fact-finding interview to award benefits. The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10.

Because the claimant's separation was disqualifying, benefits were paid to which he was not entitled. Claimant has been overpaid unemployment insurance benefits in the amount of \$1,800.00. Because the employer participated in the fact-finding interview, the claimant is obligated to repay to the agency the benefits he received and the employer's account shall not be charged.

DECISION:

The November 26, 2018 (reference 01) unemployment insurance decision is reversed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,800.00 and is obligated to repay the agency those benefits. The employer participated in the fact-finding interview and its account shall not be charged.

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Decision Dated and Mailed

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