

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MIKE E MAAS
Claimant

COLLEGE COMMUNITY SCHOOL DISTRICT
Employer

APPEAL 21A-UI-00481-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant, Mike E. Maas, filed an appeal from the November 13, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 8, 2021. The claimant participated personally. The employer, College Community School District, participated through Jeri Mortiz.

The administrative law judge took official notice of the administrative records. The fact-finding documents were unavailable in the administrative file at the time of hearing. Claimant Exhibit A was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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: The claimant was employed part-time as a bus driver and was separated from employment on March 2, 2020, when he was discharged.

Claimant began employment in March 2018, and was trained on employer rules and procedure, including reasonable force and professionalism. Claimant had three alleged incidents in November 2019 involving language when interacting with students, and once physically moving a student by “lifting them under the armpits” (Moritz testimony).

The final incident occurred on February 25, 2020. The claimant did not have a bus aide on board to assist with the students on that day. While claimant was seated, he saw a physical altercation between two students through his rearview window. The two male students were between third and fifth grade. He could see one student banging another student’s head into the window, causing a bloody nose.

He got up from his seat and said to the students, "what the hell is going on?" The claimant confirmed the first student was crying and had a bloodied nose from the incident. He then admittedly pulled the aggressor student who had been banging the other student's head into the window, by the back of his hoodie (the student had his back to the claimant) causing him to separate from the other student, before directing him to go to the front of the bus.

The parent of the aggressor student, who had the hoodie on, reported the incident to the employer. The employer reviewed cameras from the back of the bus which showed the students had separated by the time claimant reached them. Claimant explained that based upon his view from the front of the bus, the student was being injured and he did his best to get to him as fast as possible and separate them. Employer did not show claimant the video it relied upon (or offer it at the hearing) to supplement its investigation. Employer determined claimant had used excessive physical force with the student and discharged him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged but not for disqualifying job-related misconduct.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

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. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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.

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.

In this case, the claimant was discharged after having making physical contact with a student which the employer deemed to be excessive force. Employer provided no policies or procedures which would have established the employer's de-escalation procedures or training the claimant would have been given on how to handle an incident where one student is physically striking another student to the point the other student is bleeding. An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for a good cause. *Woods v. Iowa Dep't of Job Serv.* 327 N.W.2d 768, 771 (Iowa 1982).

Claimant in this case did not have a bus aide to monitor the students and did not have the luxury of viewing the incident from all angles on the bus, or from the rear view surveillance footage, which is what the employer relied upon in making its decision to discharge. In this case, the video surveillance is the most critical piece of evidence. The video surveillance would have documented an unnecessary and unreasonable use of force by the claimant when interacting with the student as alleged by employer. However, the employer did not show the footage to claimant or offer it for the hearing. Claimant credibly testified he made a split second decision upon seeing (through his rearview mirror) the bloodied child's head being repeatedly hit against the window to get up and physically separate them.

He did not act out of anger, or with such force that the student suffered harm, but rather to address an immediate assault that was occurring. It cannot be ignored that the student who was separated by the claimant's pulling of the hoodie, was at the time bloodying the face of another student by banging his head/face into a window repeatedly.

Cognizant of the delicate balance of protecting **all** students in his care while transporting them in the employer's vehicle, and the trust placed in him in caring for those children, the administrative law judge cannot conclude the claimant acted deliberately or intentionally that day in violation of a reasonably known policy. Employer failed to meet its burden of proof to present sufficient evidence to corroborate its assertion of misconduct. No statement, video, policy, prior warning, or witness was presented. The administrative law judge does not condone

the claimant's conduct but concludes his actions that day were a serious, but isolated instance of poor judgment.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job-related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The unemployment insurance decision dated November 13, 2020, (reference 01) is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



Jennifer L. Beckman
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February 22, 2021
Decision Dated and Mailed

jlb/scn