

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GREGORY A JOHNSON
Claimant

TYSON PET PRODUCTS INC
Employer

APPEAL NO. 17A-UI-01010-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/27/16
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 26, 2017, reference 03, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 17, 2017. Claimant participated. Employer participated by Dakota Cunningham. Employer's Exhibits 1 through 3 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 29, 2016. Claimant was discharged from his employment on January 3, 2017 after claimant walked off his job on December 28 and 29, 2016.

Claimant worked as a general laborer in cold areas for employer. Claimant stated that he had had gloves that workers wear in the cold areas taken from him on multiple occasions. When employees do not have gloves, they can buy more from the company store, but those purchases are out of employee's pocket. Claimant was upset about having his gloves taken by an unknown coworker at a break on December 28, 2016. Claimant decided to leave work in the middle of his shift as he did not have any gloves. He admitted to abandoning his job on that date as he did not tell a supervisor before he left. The next day claimant came into work, and was given temporary gloves by his supervisor such that claimant could continue work. Claimant was not happy with the quality of the gloves he was given by the supervisor, and was not happy that he could not speak with anyone from human resources about the multiple thefts of his gloves. Claimant decided that he was not going to work on the December 29, 2016, after talking with the manager. Claimant left work on that day also. He did not tell the manager that he was not going to work, and was warned not to walk off the job before he did.

Claimant came back to work on January 3, 2017 and was taken to human resources where he was terminated for job abandonment.

Claimant stated that he was very upset that his gloves had been repeatedly taken and was additionally upset that he had have to buy new pairs of gloves only to have them be potentially stolen again. He was also upset that he was not able to meet with a human resources representative.

Employer stated that claimant was informed at orientation that walking off the job could be grounds for dismissal. Employer further stated that claimant was told not to walk off the job after leaving on the first day, and claimant left again the next day.

Claimant stated that the loaner gloves he had been given were still in his possession as he chose to lock those gloves up in a locker.

REASONING AND CONCLUSIONS OF LAW:

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).

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.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning job abandonment. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew that he was not to walk off the job because of his displeasure with gloves being taken. He had the choice of either buying a new pair and then addressing the issue with human resources the next week, or working with the mediocre temporary gloves loaned to him from his supervisor. Claimant chose to do neither. Instead, he chose to leave his job twice informing no one, the second time after he was warned not to do so. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated January 26, 2017, reference 03, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid

wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/rvs