

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JERRELL L NERO

Claimant

APPEAL 15A-UI-08288-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMAHA STANDARD LLC

Employer

OC: 06/28/15

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 15, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 13, 2015. Claimant participated. Employer participated through Human Resources Generalist Rachel Prucha and employer representative Michele Hawkins. Employer Exhibits One and Two were admitted into evidence with no objection. Claimant Exhibit A was admitted into evidence with no objection.

ISSUE:

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: Claimant was employed full time as a lead man machine operator from January 21, 2011, and was separated from employment on June 22, 2015, when he was discharged.

The employer discharged claimant for violating Article 3 of the collective bargaining unit agreement. Ms. Prucha testified that Article 3 prohibited claimant from engaging in, participating, and/or encouraging a work stoppage. Claimant testified he did not think it would be misconduct to engage in, participate in, and/or encourage a work stoppage.

Ms. Prucha testified that on June 15, 2015, the Union and Management came to an agreement on an attendance policy issue. The agreement provided that any employee who received attendance points from March 26, 2015 to noon on June 15, 2015, would have those points removed. Employer Exhibit One. This agreement was signed by a union representative. Employer Exhibit One. Claimant was a part of the meeting where the agreement was reached; however, claimant denies that the agreement had a stop time of noon on June 15, 2015. Claimant believed the parties agree it would last all day on June 15, 2015, not stop at noon.

On June 15, 2015, over 30 employees on the night shift left and because of that, production was halted on the night shift. Ms. Prucha testified this caused financial hardship for the employer.

Claimant was one of the over 30 other employees that left that night. The employer presented several witness statements that on June 15, 2015, claimant was telling night shift employees that it was ok for the employees to leave and no points would be assessed. Employer Exhibits Six through Twelve. Ms. Prucha testified that claimant was never told that if the night shift employees left on June 15, 2015 that they would not be assessed points. Ms. Prucha was not present for the meeting where the agreement was reached between the Union and Management. Claimant testified Michelle Hawkins (not the employer's representative, a different Michelle Hawkins), Ms. Prucha's supervisor, told claimant that no points would be assessed. Employer Exhibit Two. Claimant presented three witness statements that he did not encouraged employees to leave on June 15, 2015. Claimant Exhibit A. All of the employees that left did receive attendance points; however, they were later removed pursuant to an agreement.

On June 16, 2015, claimant was suspended, without pay, until the conclusion of the investigation. Claimant refused to sign the written disciplinary documentation form informing him he was suspended. Employer Exhibit One. Claimant was discharged on June 22, 2015.

Ms. Prucha testified that claimant asked employees to write a statement stating that they left on their own accord. Ms. Prucha testified there were two different Facebook screen shots. The screen shots were not provided for this hearing.

On July 20, 2015, the Union and Management agreed to re-employ claimant at his previous position; however, the suspension still stood for his actions on June 15, 2015. Employer Exhibit Two. Claimant did return to work. Claimant testified he was brought back because there was an audio tape between himself and Ms. Hawkins where she told him it was okay for everyone to leave. The audio tape was not provided for this hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibits submitted by both parties. While the employer did not present Ms. Hawkins or any of the employees that left the night shift on June 15, 2015 to provide sworn testimony or submit to cross-examination, the combination of night shift employees' written statements and Ms. Prucha's testimony, when compared to claimant's recollection of the event, establish the employer's evidence as credible.

Claimant was present at the meeting where the Union and Management were negotiating a resolution regarding prior absences. Claimant testified the agreement would excuse any absences that occurred all day on June 15, 2015. Claimant's testimony is contradicted by Employer Exhibit One. Employer Exhibit One clearly states the reduction of absence points stops at noon on June 15, 2015. This agreement was signed by a representative of the Union. Employer Exhibit One. Even if the agreement did apply for the entire day, to actively encourage employees to walk out is in violation of Article 3 of the collective bargaining unit agreement. Based on the witness statements, claimant had a part in the over 30 night shift employees walking out on their shift on June 15, 2015. Employer Exhibit One. Ms. Prucha testified this

caused a halt in production and a financial hardship for the employer. Encouraging employees to leave their scheduled shift is not in the best interest of the employer. It is reasonable to expect if over thirty employees walk out on a shift, the employer will suffer a hardship. Claimant's argument that it was a misunderstanding on whether employees could leave and that is proven by his re-employment on July 20, 2015 is unpersuasive. Included in claimant's re-employment was an acknowledgement that claimant's actions on June 15, 2015 were worthy of discipline. The employer has presented substantial and credible evidence that claimant encouraged night shift employees to leave work on June 15, 2015 causing a halt in production, a financial hardship for the employer, and was not in the best interest of the employer. This is disqualifying misconduct even without a prior warning. Benefits are denied.

DECISION:

The July 15, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css