

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROGER L MORROW
Claimant

JELD-WEN INC
Employer

APPEAL 20A-UI-01710-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/19/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On February 24, 2020, Roger L. Morrow (claimant) filed an appeal from the February 18, 2020, reference 01, unemployment insurance decision that denied benefits based upon the determination Jeld-Wen, Inc. (employer) discharged him for conduct not in its best interest. The parties were properly notified about the hearing. A telephone hearing was held on March 18, 2020. The claimant participated personally. The employer participated through Mark Shaw, HR Manager. The Employer's Exhibits 1 through 5 were admitted into the record.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Production Associate beginning on October 7, 2016 and was separated from employment on January 14, 2020, when he was discharged. The employer has a policy prohibiting harassment, discrimination, and retaliation. The employer also has a progressive disciplinary policy that allows for a first warning, second warning, and dismissal.

On January 3, the claimant wanted to leave work at 3:00 p.m. Group Manager Curt Strawser, the claimant's supervisor, asked him to unload a truck at 2:30 p.m. The claimant resisted Strawser's directions but eventually went out to unload the truck. As he was walking past the truck, the claimant said to himself that he was tired of "people like you" coming in late. (Claimant's Testimony.) The driver and another employee, with whom the claimant had a personality conflict, reported to management that the claimant was angry and using profanity. The claimant denied the allegations when Strawser confronted him. Strawser issued the claimant a second written warning for the incidents that occurred that day. He also reported the incidents to Mark Shaw, HR Manager.

Shaw reviewed the information and conducted an additional investigation into the issues, but did not speak with the claimant or tell him that he was revisiting the situation. He determined, based on the allegations reported, that the claimant should be discharged and not just given a

warning. On January 14, Shaw notified the claimant that he was discharged for the incident that occurred on January 3.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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.

...

(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.

This definition of misconduct 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 decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. No request to continue the hearing was made and no written statement of the individual was offered. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

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 Dep't of Job Serv.*, 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. 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." Additionally, the conduct must be a current act to be disqualifying.

In this case, the employer had warned the claimant about the final incident on January 3 and there were no other incidents of misconduct after the warning. Therefore, the employer has not met the burden of proof to establish that the claimant acted deliberately or negligently after the most recent warning. The employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The February 18, 2020, reference 01, unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Stephanie R. Callahan
Administrative Law Judge

March 27, 2020
Decision Dated and Mailed