

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TODD A RODGERS

Claimant

APPEAL 19A-UI-08335-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAGAMAN PROPERTY DEVELOPMENT L

Employer

OC: 09/22/19

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On October 25, 2019, Todd Rodgers (claimant) filed an appeal from the October 18, 2019, reference 03, unemployment insurance decision that found claimant was discharged for work-related misconduct.

A telephone hearing was held on November 13, 2019. The parties were properly notified of the hearing. The claimant participated personally. Hagaman Property Development, LLC (employer) did not register for the call and did not participate in the hearing.

ISSUE:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer in mid-July 2018. He was employed full-time as a service plumber. His schedule varied. He began work around 9 or 10 a.m. each weekday and worked 10 or 12 hours or more each day. He was on call all the time. Claimant mostly provided plumbing services to Wal-Mart stores around the state. His direct supervisor was Amanda Hagaman.

Claimant was discharged from employment on September 17, 2019. Hagaman called claimant and told him she did not have any work for him that day and that “things weren’t working out,” and she had to let him go. She instructed claimant to drop his work van off at an auto dealership. He never heard further from employer. No specific final incident led to his discharge.

Claimant was counseled on several occasions regarding sleeping in his work van. Claimant often worked long days and late hours and sometimes became so tired that he would unintentionally fall asleep in his van after finishing a job at night. On other occasions when he was working late, he would call his dispatcher to get him a hotel room but was unable to reach a dispatcher.

Approximately a month and a half prior to his separation, he was pulled over at night in his work van because he was swerving. Claimant was swerving because he was tired. The owner of employer, Robert Hagaman, called him following that incident and counseled him to call his dispatcher to get a hotel room if he was tired. Several months prior to this incident, claimant had hit a deer while he was driving. Claimant had also occasionally been counseled about starting his working day earlier. However, claimant often would not get work orders until 9 or 10 a.m., so it was difficult for him to start work earlier than that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the October 18, 2019, reference 03, unemployment insurance decision that found claimant was discharged for work-related misconduct is reversed. Claimant is awarded benefits, so long as he is otherwise eligible.

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(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.

...

(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.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to

protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions “liberally to carry out its humane and beneficial purpose.” *Bridgestone/Firestone, Inc. v. Emp’t Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). “[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant.” *Diggs v. Emp’t Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

A lapse of 11 days from final act until discharge when claimant was notified on fourth day that his conduct was grounds for dismissal did not make final act a “past act”. *Greene v. Emp’t Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp’t Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011).

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep’t of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). 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.*

Employer has failed to carry its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). This administrative law judge need not decide whether claimant’s conduct rose to the level of misconduct. The evidence before this administrative law judge is that, even if claimant’s conduct does rise to the level of misconduct, his discharge was based on a past act of misconduct rather than a current one. Therefore, and pursuant to Iowa Admin. Code r.871-24.32(8), claimant is not disqualified from benefits.

DECISION:

The October 18, 2019 (reference 03) unemployment insurance decision is reversed. The claimant’s discharge was based on a past act of alleged misconduct. Claimant is awarded benefits, so long as he is otherwise eligible.

Andrew B. Duffelmeyer
Administrative Law Judge

Decision Dated and Mailed

abd/scn