

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PHILLIP I PERRY
Claimant

EAST PENN MANUFACTURING CO INC
Employer

APPEAL NO. 19A-UI-00847-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/30/18
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 22, 2019, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 13, 2019. Claimant participated personally. Employer participated by Alison Snyder, Bob Bouska and Melissa Frederick. Claimant's Exhibit A was 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 19, 2018. Employer discharged claimant on January 3, 2019 because claimant made a copy of employer's master key and didn't inform employer that he'd given a copy to a person who was not supposed to have possession of a master key.

Claimant was the maintenance supervisor for employer. Claimant was asked to make copies of the master key for employer. He made those copies, and gave one of them to an electro-mechanical technician. The technician was not a supervisor or member of management, but claimant often didn't have the master key when he needed it, and didn't want to bother other people not in his immediate vicinity.

On January 10, 2018, shortly after claimant had given a key to the technician, the plant manager sent an email to claimant and two other supervisors. The email stated that under no circumstances is anyone to make a copy of the master key. Only the three people listed in the email were to have master keys. Claimant received this email, but never addressed the fact that he'd made a copy of the master key for a co-worker.

In December 2018, it came to employer's attention that claimant had given a copy of the master key to a co-worker against the instruction of the January 2018 email and had never told

employer of his action. The employee came to employer to tell of his possession of a master key when rumor had spread regarding an extra master key circulating around the building. The employee told employer that claimant had given him the key.

At the time of hire, claimant received a policy and procedures manual that listed different groupings of violations that could lead to various disciplines. The Group 3 violations were the most serious and could lead to immediate termination. Claimant was stated to have committed a group three violation in that he was insubordinate by giving out a copy of the master key that was not to be shared, and then not sharing with employer the fact that he'd given out the key, even though he knew that he wasn't to give out any key.

REASONING AND CONCLUSIONS OF LAW:

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.

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).

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 sharing of a master key with an employee who was not listed as a recipient of a master key. Although claimant stated he shared the key prior to receiving the email specifically stating no one other than the listed parties was to have a master key, he came to find out that he was not to have shared that key, and did nothing to address this situation over the next year.

The last incident, which brought about the discharge, constitutes misconduct because the sharing of master keys with unauthorized people without the knowledge of management is a very dangerous situation for a company to be in. Once one unauthorized copy of a master key is made, employer can no longer specifically trace to whom master keys are given and, as a result, cannot trace any additional copies made. This can grant unfettered access to secured areas by anyone. 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 22, 2019, reference 01, 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/scn