

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHNNY S PATTERSON
Claimant

G M R I INC
Employer

APPEAL 15A-UI-13472-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/08/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 2, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 29, 2015. Claimant participated. Employer participated through managing partner, Chris Gaines and representative, Thomas Kuiper. Employer Exhibit One was admitted into evidence with no objection. Administrative law judges Dawn Boucher, Liz Johnson and Nicole Merrill attended and observed the hearing.

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 part time as a server from October 7, 2014, and was separated from employment on November 2, 2015, when he was discharged.

The employer has a workplace violence policy. Employer Exhibit One. Claimant was aware of the workplace violence policy. The policy allows for discipline up to and including termination. The employer also has a progressive disciplinary policy; however, the employer can skip steps depending on the severity of the offense.

On November 2, 2015, claimant and Mr. Gaines were in the office together discussing a cash handling issue. Claimant did not agree with the coaching that Mr. Gaines was giving him. Claimant raised his voice and was pointing at Mr. Gaines. Mr. Gaines did not recall the exact words that were said, but recalled that the nature of claimant's voice changed and he was being verbally abusive. Claimant then got louder and closer to Mr. Gaines. Mr. Gaines felt the incident was leading towards violence. Mr. Gaines asked claimant to leave because of his behavior. Claimant continued on for two or three more minutes and then left. Claimant did not make any physical contact with Mr. Gaines when he was pointing at him, but Mr. Gaines was concerned that he was going to make contact with Mr. Gaines. Mr. Gaines contacted employer relations with the company and they did an investigation. Mr. Gaines felt claimant's conduct

was threatening; the language claimant used was abusive and his actions were aggressive. Mr. Gaines felt threatened.

In the summer of 2015, Mr. Gaines spoke with claimant and a manager about an incident that occurred between the two. The manager had felt threatened, but after speaking with both of them, Mr. Gaines believed the situation was resolved.

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.

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 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 exhibit submitted. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has a policy prohibiting violence in the workplace, including threats. Employer Exhibit One. On November 2, 2015, claimant was receiving a coaching from Mr. Gaines. Claimant did not agree with the coaching and began to get louder and closer to Mr. Gaines. Claimant was using abusive language and Mr. Gaines felt claimant's pointing and getting closer were aggressive actions. Because of claimant's behavior, Mr. Gaines had to ask claimant to leave the office. Claimant's argument that he was not hostile is not persuasive. Claimant testified that Mr. Gaines told him he was yelling at Mr. Gaines. Furthermore, claimant testified that during the incident a co-worker put their hand on his shoulder. It is reasonable to presume that the co-worker put their hand on his shoulder to prevent him from advancing towards Mr. Gaines. It is also important to note, that claimant testified that they were in a small room, thus placing claimant and Mr. Gaines in close proximity.

The employer has presented substantial and credible evidence that claimant displayed abusive language and aggressive actions while he was receiving a coaching on November 2, 2015. The employer has a duty to protect the safety of its employees. Claimant's conduct was contrary to the best interests of the employer and the safety of its coworker. The conduct is misconduct in violation of a known policy, even without prior warning. Benefits are denied.

DECISION:

The December 2, 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