

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LOGAN BALLANGER
Claimant

CUNNINGHAM REIS LLC
Employer

APPEAL NO. 21A-UI-04993-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/29/19
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 February 3, 2021, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 16, 2021. Claimant participated. Employer participated by Mary Herbert, Brett Mowder.

ISSUES:

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 4, 2020. Claimant was terminated on December 7, 2020 after walking out of a meeting that was held to discuss a physical altercation claimant had with a coworker on December 4, 2020.

Claimant worked as an operator for employer. During the four years claimant worked for employer he had numerous write-ups for repeated racial slurs and insults, and an ability to control his temper, which manifested itself on at least one occasion as a broken window in a skid loader. The final incidents that led to the termination started on December 4, 2020 when claimant was repeatedly insulting a coworker. When the coworker responded in kind, claimant broke a broom over a highway median and put the broken stick up to the coworker. When the coworker pushed him away, claimant grabbed the coworker and yanked his sweatshirt over his head holding him in a way that the coworker couldn't see. The coworker freed himself and the two parties wrestled. The coworker hit claimant and held him to the ground. The parties were separated, but claimant continued to try and get back at the coworker. The coworker stayed away as the supervisor requested, but it took an extended period to calm claimant.

The supervisor asked to parties to meet the next Monday to discuss the situation. All parties showed, and claimant became upset during the meeting and walked out. Claimant was terminated at that time.

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.

It is the duty of the administrative law judge as 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 may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. 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*, Id. 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

believable evidence; 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*, Id. In this matter, claimant was found not to be credible in sharing both the details of the last incidents that led to his termination (he omitted the Monday meeting altogether) and additionally in forgetting that two days before the incident employer addressed him about his ongoing insults and racial comments.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning insulting and fighting with coworkers and not being able to control his anger. Claimant was warned concerning this policy. The last two incidents were claimant's fault as he was aggressive towards a coworker and then walked out of a meeting intending to find some resolution to the incident. These actions are misconduct – especially when viewed in the context of his repeated warnings.

The last incident, which brought about the discharge, constitutes misconduct because claimant. 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 February 3, 2021, 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

April 21, 2021
Decision Dated and Mailed

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