

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

QUINN SITZMANN
Claimant

APPEAL 20A-UI-08240-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COURY ALIGNMENT SPECIALISTS
Employer

**OC: 4/19/20
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On July 13, 2020, the claimant filed an appeal from the July 8, 2020, (reference 01) unemployment insurance decision that denied benefits based on a false employment application. The parties were properly notified about the hearing. A telephone hearing was held on August 25, 2020. Claimant participated. Employer participated through Rick Coury, Owner.

ISSUE:

Did claimant commit job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April, 2019. Claimant last worked as a full-time tire/lube laborer. Claimant was separated from employment on April 14, 2020, when Mr. Coury fired claimant.

On April 14, 2020 Mr. Coury spoke to the claimant about a job he performed. Mr. Coury told the claimant he did the work incorrectly. Claimant disagreed and felt the way he did the job was correct. At that time the claimant got upset and swore. Claimant swore at the employer, using “F-bombs” and asked Mr. Coury to “f***** fire” him. Mr. Coury obliged. Mr. Coury spoke to claimant the next week and offered to rehire him if he would agree to work within the rules. Claimant declined this offer.

Mr. Coury testified that he had concerns about claimant’s attendance and the fact that claimant had lost his regular driving privileges. Company policy, which was provided to claimant required a valid driver’s license and to report driving infraction to the HR department. Claimant had a suspended license in January which only allowed him to drive to and from work. Claimant’s job required him to test drive cars before repairs. Mr. Coury had other staff perform this function of his job.

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).

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 is not 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).

I do not find that the driver's license and attendance issues amounted to misconduct. The employer knew claimant could not drive and accepted/ratified his driving limitation. The employer testified that claimant's absences were due to medical reason: This is not misconduct.

The claimant was upset at work and yelled at his employer, shouting "f-bombs" directed at his employer. No one generally expects that an auto shop will be free of some swearing, however the claimant escalated the swearing into a verbal tirade that went beyond reasonable limits.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The July 8, 2020, (reference 01) unemployment insurance decision is affirmed. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though claimant is not eligible for regular unemployment insurance benefits under state law, claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. This decision does not address when claimant is eligible for PUA. For a decision on such eligibility, claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>
<https://www.iowaworkforcedevelopment.gov/Pua-application>



James F. Elliott
Administrative Law Judge

August 28, 2020
Decision Dated and Mailed

je/sam