IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

STEVE A KOUPAL Claimant **LECLAIRE MANUFACTURING CO** Employer	**APPEAL NO. 20A-UI-02320-B2T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/23/20** **Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 11**,** 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 28, 2020. Claimant participated personally. Employer participated by Amy Cavazos and Allen Asleson. Both sides agreed to waive time and notice on the issue of overpayment.

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 February 19, 2020. Employer discharged claimant on February 19, 2020 because claimant sent an email to multiple people including managers where he threatened to, "put a 2nd shift boot up your ass," to a manager who'd been complaining to second shift members in an earlier email.

Claimant worked as a second shift shop supervisor for employer. In September 2019 claimant received a verbal warning for a very aggressive and foul-mouthed email sent to a manager who'd been berating claimant and other workers. Claimant was told that he was not in trouble, but shouldn't be sending off aggressive emails to managers without approval of his manager.

Claimant had attendance issues also. Clamant had previously been placed on suspension from August to November, 2019 for excessive absences. Since then, he'd missed a number of days, but had no more alerts for his absences.

Employer stated that but for claimant's ongoing attendance issues, he would not have been terminated for the email that he's written on February 19, 2020. But claimant, who was a supervisor, set a poor example for other employees by not consistently making it to work.

Employer stated that it does have a progressive disciplinary system, and claimant's email might have only been a written warning or a suspension on its own, but combined with his absenteeism, it created that situation where progressive discipline wasn't followed, as is the employer's right.

Claimant stated that his email sent was thought to simply be a text to a friend. That's why the "boot up your ass" comment was made. It was not meant to be taken as a threat.

Claimant has received state unemployment benefits in this matter.

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.

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, 462 N.W.2d at 737*. 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)*. In this matter, employer's decision to terminate claimant is not in question. The only issue before the administrative law judge is whether claimant's actions amounted to misconduct. Employer admitted that the action of the email itself did not amount to misconduct and would have only warranted a warning by itself. It was only in conjunction with the attendance issues that created a situation whereby claimant was terminated. Whereas the employer is free to combine different types of actions to create a terminable situation, the administrative law judge must look at the specific actions distinctly and not intermingle different types of actions to create a misconduct.

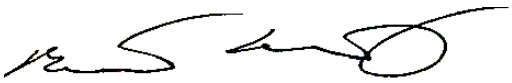
In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning threatening a supervisor.

The last incident, which brought about the discharge, fails to constitute misconduct because employer stated that the email in and of itself did not create a terminable situation. The situation was created by combining two different types of non-terminable actions – attendance and an inappropriate email. There was no last, most recent action to evaluate on its own for misconduct. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

The overpayment matter is moot.

DECISION:

The decision of the representative dated March 11, 2020, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

April 30, 2020
Decision Dated and Mailed

bab/scn