

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM H LUNDBOHUM
Claimant

LIBERTY HOLDINGS INC
Employer

APPEAL 20A-UI-01894-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/02/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On February 29, 2020, William Lundbohum (claimant) filed an appeal from the February 21, 2020 (reference 01) unemployment insurance decision that found he was not eligible for benefits.

A telephone hearing was held on March 18, 2020. The parties were properly notified of the hearing. The claimant participated personally. Liberty Holdings Inc. (employer) did not register a number for the hearing and did not participate.

Claimant's Exhibits 1 and 2 were admitted.

ISSUE:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time concrete driver. Claimant's first day of employment was February 26, 2016. The last day claimant worked on the job was November 26, 2019. Claimant's immediate supervisor was Rich Hall. Claimant separated from employment on November 27, 2019. Claimant was discharged by Hall on that date.

Claimant requested time off on November 14 or 15 to do a walk-through on a house he was buying. He requested to be off at 4 p.m. so he could be at the walk-through by 5 p.m. However, employer did not allow him to leave until approximately 5 p.m., making him about 45 minutes late for the walk-through. Claimant then called in on November 18 to inform employer he would not be at work because he had to close on his house. This request for time off was not granted, but claimant was absent nonetheless as he felt he could not miss the closing.

Claimant was absent on November 22 and 23 to move into his new home. Claimant did call in to report he would not be in on those days but did not fill out a request form and as such his request

for those days off was not granted. Claimant was written up the following Monday, November 25, for failing to fill out a request sheet. About a month prior a manager had told everyone they were busy and no one was getting time off so don't bother filling out a request sheet.

On November 26, claimant was working and refused to take a load. It was dark, it was raining, and the temperature was dropping. Claimant's clothes were wet, which caused his truck to fog up and made it impossible for him to see through the windshield. He was having to drive by putting his head out the window to see. Claimant's shift had ended but he was told to take another load. He told his supervisor he did not feel safe and was going home. Employer had told claimant and others in the past to not do things if they did not feel safe doing them.

The following morning, claimant went into work around 7 a.m. Hall told him he was discharged. Hall told claimant he was discharged for telling a coworker that he would no longer fill out a request form when he needed time off. Claimant did make that comment to a coworker. Claimant tried to explain to Hall why he made that comment but Hall refused to discuss it. The administrative law judge finds that claimant was discharged for absences related to his refusal to fill out a request form.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the February 21, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits is REVERSED. Claimant is eligible for benefits, provided he meets all other eligibility requirements.

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 provides in relevant part:

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 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 v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). The issue is not whether the employer made a correct decision in separating claimant, 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

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).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2).

The administrative law judge finds the final act leading to discharge was claimant's refusal to work in unsafe conditions on November 26, 2019. Claimant's refusal was warranted, given the unsafe conditions and past instruction not to work in an unsafe manner, and thus did not constitute misconduct. The administrative law judge finds claimant's prior absences were unexcused. However, claimant had already been disciplined for those absences the day prior, on November 25. However, after this discipline, claimant did not commit any further acts of misconduct.

The final act leading to discharge must be misconduct in order for the claimant to be disqualified from benefits. An employer cannot "bank" an incident of alleged misconduct and hold it against

an individual until it no longer desires continuing employment. Here, employer had disciplined claimant just one day prior but allowed him to continue working. It was then upset that he refused to work in unsafe conditions and determined to discharge him. However, this final act was not an act of misconduct and employer's own actions in disciplining claimant for the previous absences rather than discharging him are telling. It is inconsistent for employer to allow claimant to continue working and then subsequently argue that claimant's actions constituted substantial job-related misconduct such that disqualification from benefits is warranted.

DECISION:

The February 21, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits is REVERSED. Claimant is eligible for benefits, provided he meets all other eligibility requirements.



Andrew B. Duffelmeyer
Administrative Law Judge
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March 30, 2020
Decision Dated and Mailed

abd/scn