

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RONALD D PARHAM
Claimant

APPEAL 15A-UI-07851-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GRAND RIVER MUTUAL TELEPHONE
CORP**
Employer

**OC: 06/14/15
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the July 1, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon the determination it did not furnish enough evidence to show the claimant engaged in disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 5, 2015. Claimant Ronald Parham participated through Alan Wilson, Attorney at Law. Employer Grand River Mutual Telephone Corp. participated through Director of Human Resources and Regulatory Affairs Jennifer Neff.

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: The claimant was employed full time as a Combination Technician beginning July 17, 2000, and was separated from employment on June 11, 2015, when he was terminated. On June 6, 2015, the claimant went on a service call for a customer who had cut the telephone wire while installing a fence. The claimant used an excavator to dig up the wire so he could repair it. While he was backfilling the hole he made, the excavator started to slip and he became concerned for his safety. The claimant determined he could repair the hole by hand and put the excavator away.

At some point, the customer's neighbor approached the claimant to ask what he was doing at the property. During their conversation, it was stated that the telephone line was clearly marked. The customer heard this part of the conversation and became angry. He was yelling

and swearing at the claimant. He was also upset that the claimant had put the excavator away. The claimant then got the excavator down to finish stamping down the hole. The claimant accidentally broke one of the fence poles and loosened another. The customer commented that the hole was clearly marked, in reference to the early overheard conversation. The claimant replied, "So was the line." The customer called to complain to the claimant's supervisor.

An investigation was conducted into the incident. The claimant acknowledged he should not have made his final comment. The claimant was terminated for his conduct during that incident.

The claimant had received previous warnings. In 2011, he was given a warning for having seven accidents with company vehicles. He was also given a warning and suspension for making an inappropriate comment during a meeting. In 2013, he was suspended for three days for making an ill-advised joke about calling in sick to work to avoid being shadowed by a customer service representative and then calling in sick on that day. The claimant did have two customers complain about him in May 2015 stating he was not a good company representative, but he was only verbally counseled about each situation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). . 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. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

There is no evidence the claimant intentionally committed a specific and current act of misconduct. The previous warnings that the claimant received were not closely enough related to the incident that occurred. A warning for co-worker issues is not similar to customer service issues. While the claimant had been previously warned about accidents with company vehicles, he had gone four years without an incident. His conduct had improved. The employer's simple accrual of a certain number of warnings counting towards discharge does not establish repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits.

This current incident was also unique in that the claimant was being yelled and sworn at by a customer. He did not respond in kind when speaking with the customer; although, he did, admittedly, make one ill-advised remark. While the employer may have had a good business reason for discharging the claimant, it has not met its burden to show he engaged in willful or deliberate conduct that would disqualify him from benefits.

DECISION:

The July 1, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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