

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENNIS M CORNWALL
Claimant

FERGUSON ENTERPRISES INC
Employer

APPEAL 16A-UI-13259-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/20/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 9, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for dishonestly in connection with his work. The parties were properly notified of the hearing. A telephone hearing was held on January 5, 2017. The claimant Dennis Cornwall participated and was represented by attorney Charles Showalter. The employer Ferguson Enterprises Inc. participated through Human Resource Manager Debra Damge. Claimant's Exhibits 1 through 3 were received into evidence.

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: Claimant was employed full time as a picker operator from March 23, 2015, until this employment ended on November 16, 2016, when he was discharged.

At the time of his separation from employment claimant was working for the employer in an off-site position in order to accommodate a workplace injury. At some point in time it was determine that claimant would have permanent work restrictions that the employer would not be able to accommodate. On November 16, 2016, claimant was notified that the employer was unable to accommodate his restrictions going forward and told he was no longer to report to his work assignment. Based on this information and Damge's inquiry as to whether he still had anything in his locker, claimant believed his employment was terminated. In support of this contention claimant submitted internal emails between Damge and other various individuals that refer to claimant's "last working day" and "last time sheet." (Exhibits 1 through 3).

Damge testified claimant was not terminated on November 16, but was on leave, though she admitted no one communicated this to claimant. Damge testified claimant was not terminated until November 21, 2016, when he sent a letter to the employer admitting he had not worked the last three weeks, though he had submitted time for those weeks. Claimant had not yet been

paid for this time and requested the employer not issue a final pay check. According to Damge the references to claimant's last working day and time sheet are only in reference to the specific assignment he was working. Damge was not able to identify any plans to maintain claimant's employment and admitted the determination had been made that the employer could not accommodate his restrictions going forward.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *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). 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).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Here, there is a dispute between the parties as to when the claimant's employment was terminated and for what reason. The claimant testified he was discharged on November 16, 2016 due to the employer's inability to accommodate a permanent work restriction. The employer testified claimant was discharged on November 21 for submitting fraudulent time sheets. 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 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. *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. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events. Because the claimant was discharged due to the employer's inability to accommodate his work restriction and not for any misconduct, benefits are allowed.

DECISION:

The December 9, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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