

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOE M SMITH
Claimant

APPEAL 18A-UI-07419-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYERS MUTUAL CASUALTY CO
Employer

**OC: 06/03/18
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 3, 2018, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 10, 2018. Claimant participated personally and was represented by Andrew B. Duffelmeyer, Attorney at Law. Employer participated by Amanda Easton, Human Resources Manager and was represented by Maggie White, Attorney at Law. Employer's Exhibits 1-8 and Claimant's Exhibits A-I were admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related 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 May 31, 2018. Employer discharged claimant on June 1, 2018, because he had engaged in unprofessional conduct with a client.

Claimant began working for employer on December 3, 2012 as a physical damage appraiser. Claimant was a good employee, but he did have difficulty dealing with upset or angry customers. During claimant's last performance evaluation, he was reminded that he needed to control outbursts and control his emotions at work. Claimant had shown improvement over time, but he still had periods where he seemed to have difficulty not getting personally involved in conflicts at work.

On May 31, 2018, claimant was overheard speaking to a client by Bill Henry who was a co-worker in the same department. During that conversation, Mr. Henry overheard claimant tell the client that he had been dishonest with the company. Mr. Smith became even more agitated during the call, and he began talking in a very loud and aggressive tone. Claimant told the client that, "you screwed EMC and got away with it", and that "you got one of our associate underwriters fired because you manipulated them to tell you coverage you did not have". Claimant also told the client that he was being dropped as a customer, and that he hoped the customer would receive more satisfaction from his next insurance company.

The customer contacted the employer and filed a complaint. An investigation was conducted and employer concluded that claimant had gotten into an argument with a customer and that he

had made insulting and threatening statements to that customer. Claimant was interviewed by the employer and he denied that he had told the customer that he was being dropped from coverage. Employer reviewed the complaint lodged by the customer and the statement provided by claimant's co-worker Bill Henry. Employer concluded that claimant had engaged in conduct that was contrary to the employer's interest. Employer informed claimant that his employment was being terminated immediately on June 1, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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 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.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for

misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). 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 does not constitute 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).

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.*

Claimant engaged in unprofessional conduct that was contrary to the interest of the company. Employer did provide sufficient evidence of deliberate conduct in violation of company policy, procedure, or prior warning. Claimant's conduct does evince such willful or wanton disregard of 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. Benefits are denied.

DECISION:

The July 3, 2018, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn