

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JERRY E BIRD

Claimant

GLOBAL FIBERGLASS SOLUTIONS INC

Employer

APPEAL NO. 18A-UI-06062-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/08/18

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 May 29, 2018, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 19, 2018. Claimant participated personally. Employer participated by Angela Brashler and James Farr.

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 April 5, 2018. Employer discharged claimant on April 6, 2018, because claimant had an inappropriate outburst after being presented with written write-ups for leaving work early on multiple occasions.

Claimant worked as a loader for employer. During his months of employment, claimant had problems with his co-workers such that a supervisor called a meeting with co-workers concerning claimant.

Employer stated that on numerous occasions, claimant had asked to leave his shift early, for non-medical reasons. Claimant's requests had been denied by his supervisor and claimant left work early anyway. Claimant was given a verbal warning for this and was being given two written warnings on the day of the discharge. Three warnings were necessary for a discharge as a part of employer's attendance policy.

Claimant admitted that he got angry with employer when he was being presented the written warnings on April 5, 2018. He admitted to telling his supervisor he was lying and that he was angry. He stated he was not presented with the actual warnings and did not sign them. When asked by the administrative law judge to give further explanation about the give-and-take between the parties at the meeting, claimant declined to elaborate. He did say that he left when he was asked to leave, but denied creating a scene. He said that for an unknown reason, he was confronted by a co-worker at his vehicle as he was leaving, and he was ready to fight that person.

Employer stated that claimant refused to sign the written warnings when they were presented to him. Claimant was very aggressive at the meeting and threatening. Claimant left the meeting very upset and threw an energy drink at a window in the shop and threatened his supervisor and other co-workers with physical violence. Claimant left the building and returned to be more threatening. Employer had to call the police in an attempt to have claimant removed from the area. Claimant was terminated for his threats and outburst at the meeting.

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.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The

conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

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 Ct. 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. *State v. Holtz*, 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. *State v. Holtz*, Id. In this matter, claimant became very excited and raised his voice repeatedly during the hearing. Claimant's story with regards to the number of warnings that he'd been issued changed during the hearing. Claimant's testimony was not credible when compared to employer's testimony and more weight is given to employer's version of the events.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning threats of violence against his superiors and co-workers. Claimant received the employee handbook explaining this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant's violent outburst was not to be accepted by employer. Employer had to contact the police as claimant was so out of control. Threatening a supervisor is not an acceptable action. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated May 29, 2018, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn