

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW J HOLLINGSWORTH
Claimant

HY-VEE INC
Employer

APPEAL 21A-UI-13934-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/09/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant, Matthew J. Hollingsworth, filed an appeal from the June 10, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 13, 2021. The claimant participated. The employer, Hy-Vee Inc., participated through Barbara Buss, hearing representative. Joe Van Arsdale testified.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 part-time as a clerk in the “C” store, and was separated from employment on March 24, 2021, when he was discharged for being belligerent and appearing under the influence of alcohol at work.

Employer has a written rule which prohibits employees consuming alcohol or being intoxicated at work. Claimant was trained on employer rules and procedures. Employer discharged claimant based upon reports that he appeared under the influence of alcohol at work on March 21, 2021. The employer witnesses who observed the claimant did not attend the hearing but stated claimant appeared to be “passing out” and slurring words.

Claimant denied consuming alcohol the day of his shift, or at work. He denied taking any medications or drugs beyond Advil. He stated he had on occasion experienced bouts of dizziness which he believed may be attributed to low blood sugar, as diabetes ran in his family. Claimant was not tested for drugs or alcohol. He was driven home by a manager and subsequently discharged.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“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).

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. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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.

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.

The employer in this case failed to present sufficient evidence to corroborate its allegation of misconduct, and that claimant was under the influence of alcohol at work on March 21, 2021. Employer presented hearsay statements, did not test claimant and claimant credibly denied consuming alcohol or drugs before or at the workplace. Claimant further offered a plausible explanation for his dizziness and slurring. Based on the evidence presented, the administrative law judge concludes the employer did not establish by a preponderance of the evidence that claimant was discharged for a final or current act of misconduct.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job-related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The June 10, 2021, (reference 01) unemployment insurance decision is REVERSED. The claimant was discharged but not for misconduct. Benefits are allowed, provided he is otherwise eligible.



Jennifer L. Beckman
Administrative Law Judge
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August 18, 2021
Decision Dated and Mailed

jlb/scn