

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN D OCONNER
Claimant

GREEN BUICK GMC INC
Employer

APPEAL 18A-UI-03459-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/18/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 9, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for engaging in conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on April 10, 2018. The claimant, John O’Conner, participated and was represented by Heather L. Carlson, Attorney at Law. The employer, Green Buick GMC, Inc., participated through Cary Curtis; Eric Dressing, Owner; Joe Morrow, Body Shop Manager. Claimant’s Exhibit A and Employer’s Exhibits 1 through 10 were received and admitted into the record without objection.

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, most recently as a body technician, from July 3, 2015, until February 21, 2018, when he was discharged. On February 16, 2018, claimant got into an argument with co-worker Jim Ledbetter. Claimant was returning from the office and found Ledbetter near his workstation. Ledbetter was complaining about claimant not working quickly enough and getting him the parts he needed to paint. Ledbetter tipped over a bumper box and knocked some parts and papers onto the floor. As the argument continued, claimant kicked the bumper box at Ledbetter. He went toward Ledbetter, “heated up by that time,” and was “trying to really get in his face and let him know that I was not going to be intimidated by him.” (Claimant testimony) It appears claimant bumps Ledbetter with his chest during this point. (Exhibit 10) The altercation ends when Morrow comes out of the office. Morrow initially spoke with both claimant and Ledbetter about the incident. Claimant reported that Ledbetter had gotten up in his face, and Ledbetter reported that claimant had tried to physically assault him.

Claimant and Ledbetter were involved in one prior altercation that occurred approximately one year prior. Ledbetter had reported that claimant shoved him during that incident. Claimant initially denied that he shoved Ledbetter, and the employer did not have any video surveillance

to conclusively determine what had occurred. Neither claimant nor Ledbetter were disciplined for the prior incident. The employer maintains a Workplace Violence Prevention policy. (Exhibit 8) This policy prohibits employees from threatening, intimidating, or harassing any other employee or individual.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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). 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).

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, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's testimony and evidence more credible than claimant's testimony.

In this case, claimant was involved in an argument with his co-worker. During this argument, claimant kicked a large object toward his co-worker and then aggressively pursued the co-worker, bumping him with his chest. Claimant admits that he was heated and trying to get in his co-worker's face. Even if claimant's co-worker was making negative comments about him, claimant had other options rather than resort to threatening behavior. The employer has established that claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The March 9, 2018, (reference 01) unemployment insurance decision is affirmed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn