

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BYRON K TATE
Claimant

FAREWAY STORES INC
Employer

APPEAL 22A-UI-02122-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/18/21
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Byron K Tate, the claimant/appellant, filed an appeal from the December 15, 2021, (reference 02) unemployment insurance decision that denied benefits because of a July 22, 2021 discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on February 15, 2022. Mr. Tate participated and testified. The employer participated through Theresa McLaughlin, vice president of human resources, and Dustin Lechtenberg, regional meat coordinator. Employer's Exhibit 1 was admitted as evidence.

ISSUE:

Was Mr. Tate discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Tate began working for the employer on July 22, 2002. He worked as a full-time market clerk. His employment ended on July 22, 2021.

The employer's policy provides that if an employee does not sign a reprimand acknowledging they received it, the employee could be disciplined up to, and including, termination of employment. Mr. Tate acknowledged receiving the policy most recently on January 25, 2021.

On July 17, Mr. Tate was at work and a new assistant manager was at work. The store manager and a different assistant manager were not at work that day. Another employee came to Mr. Tate while he was at work and accused Mr. Tate of texting the other employee's wife. Mr. Tate told the other employee that he was not texting the other employee's wife, but Mr. Tate's wife was texting the other employee's wife. Mr. Tate left his workstation and walked the other employee out of the area where Mr. Tate worked. The assistant manager on duty asked Mr. Tate if he was on break. Customers and other employees heard the assistant manager ask Mr. Tate this question. Mr. Tate perceived the assistant manager to be exceeding her authority and disrespecting him. Mr. Tate called the assistant manager a hypocrite several times because she had talked with her family and interacted with others during work hours but had not taken a

break. Customers and other employees could hear Mr. Tate's comments to the assistant manager.

Mr. Tate had previously sent Mr. Lechtenberg a picture showing the assistant manager braiding her husband's hair in the back at the store. Mr. Lechtenberg received Mr. Tate's picture, talked with the store manager, and the store manager resolved the issue with the store manager. Mr. Tate did not know that this had happened. Mr. Tate felt that the assistant manager was attacking him that day because he had sent the picture to Mr. Lechtenberg. The assistant manager did not bring up the issue of the picture that day. Mr. Tate called the store manager and Mr. Lechtenberg but he was not able to reach either of them. Mr. Tate left the store before his shift was over because he was frustrated and did not want things to escalate. Mr. Tate left about two hours before the end of his shift. He did not ask for permission to leave work before the end of his shift. Mr. Tate was the only Black person working in the market and he was not as friendly with his co-workers as other were. Mr. Tate felt that the assistant manager created a hostile work environment in retaliation for the picture he sent to Mr. Lechtenberg and because of his race.

On July 22, Mr. Lechtenberg and the store manager talked with Mr. Tate about the incident. The employer gave Mr. Tate a write up for talking about his outside DJ business at work, being disrespectful to the assistant manager, and for leaving work without permission. The write up also including language that if Mr. Tate did not sign the write up would result in termination of his employment. The employer asked Mr. Tate to read the write up and sign it. Mr. Tate read the write up and told the employer that he would not sign it because he did not agree that he was talking with the other employee about his outside DJ business. Mr. Tate told the employer that his conversation with the other employee was about text communication between the other, the other employee's spouse and Mr. Tate. The employer added language to the write up stating that Mr. Tate stated that he was talking with the other employee about a text conversation. The store manager told Mr. Tate that he has to listen to the assistant manager. Mr. Tate said he could not respect the assistant because the assistant store manager did not respect him. The employer warned Mr. Tate that his employment would be terminate if he did not sign the write up. A few months prior, the employer had given Mr. Tate a verbal warning for losing his cool at work. The employer told Mr. Tate that since he had a previous verbal warning, this warning was written. The employer asked Mr. Tate to sign the write up at least two more times. Mr. Tate refused to sign the write up. Mr. Tate testified that he refused to sign the write up because he felt disrespected. The employer terminated Mr. Tate's employment for refusal to sign the write up.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Tate 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.

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).

Mr. Tate alleged, but did not prove, that the assistant manager retaliated against him when she asked him if he was on break. The administrative law judge does not take lightly Mr. Tate's testimony about his experiences, including him feeling disrespected, retaliated against because he sent the picture, and retaliated against because of his race. However, the law sets the standard as would a reasonable person find the working conditions intolerable and detrimental. Mr. Tate has failed to meet that standard.

Regarding Mr. Tate's behavior, the employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Mr. Tate repeatedly refused to sign the write up, even after the employer added language to show that Mr. Tate's July 17 conversation was about texting and not his DJ business, and even after the employer warned him that if he continued to refuse to sign his employment would be terminated. Despite the warning and the employer asking him to sign several times, Mr. Tate continued to engage in similar behavior. This is disqualifying misconduct. Benefits are denied.

DECISION:

The December 15, 2021, (reference 02) unemployment insurance decision is affirmed. Mr. Tate 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.



Daniel Zeno
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March 8, 2022
Decision Dated and Mailed

dz/scn