

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DWAINE A BAUMAN

Claimant

HEALTHCARE OF IOWA, INC.

Employer

**CASE NO. 22IWDUI0087
IWD APPEAL NO. 22A-UI-01451**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 8/15/2021
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Dwaine A. Bauman filed a timely appeal from a December 14, 2021, unemployment insurance decision that denied unemployment benefits to the claimant based on his "violation of a known company rule." A telephone hearing was held February 18, 2022. The parties were properly notified of the hearing. Bauman was self-represented and testified on his own behalf. Healthcare of Iowa, Inc. was represented by Lynn Johnson, Regional Operations Director of Healthcare of Iowa, Inc. Kaleigh Sieck, Executive Director of Birkwood Village, served as a witness on the employer's behalf.

Official notice was taken of the documents in the administrative file. The parties did not submit additional exhibits.

ISSUE:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant/appellant, Bauman, was hired to be the Maintenance Supervisor at Birkwood Village in Tama-Toledo, Iowa on October 25, 2021. Birkwood Village is a senior living memory care community run by Healthcare of Iowa, Inc. He was hired to work full-time from 8:00 a.m. to 5:00 p.m. At the time he was hired, Birkwood Village had not yet open. His manager was going to be Ms. Sieck. Claimant was discharged during his on-boarding process on November 9, 2021.

Bauman applied for the position with Birkwood Village. As part of the application and interview process, he filled out a background check. In the information, which he provided, he wrote that he had charges in September of 2021 but that they were dismissed on September 15. The employer did not ask him about these charges. As part of the process, the employer conducts a background check of its potential employees. Claimant's background check had several hits from the 1990's, about which the employer was not concerned.

While the facility was still being constructed but after claimant had already been hired, a construction worker on the site told the employer that they should check into a standoff between the claimant and the police. Johnson and several others conducted an internet search of the claimant. They learned that there was a standoff between claimant and the police and arson was also involved. Johnson followed up with the police to ensure that the information they had learned was about the claimant. The police confirmed that it was the claimant who had been involved in the standoff.

Neither Johnson nor Sieck conducted the claimant's hiring interview. Johnson reached out to the interviewer who told her that claimant was made aware that he would have to go through a background check and was asked whether he had any hits or pending charges to discuss. Claimant did not provide any information about the incident with the police at issue in the discharge. The incident did not appear on the background check.

After Johnson verified that it was the claimant who had been involved in the standoff with police, she followed up with employer's legal counsel and determined that claimant needed to be discharged. The employer based its discharge of the claimant on a rule regarding character and representation of the company. Because of the severity of the charges against claimant, employer

believes that they could not continue his employment. Employer believes that they have an obligation to the residents of the facility and that all of the people in leadership need to be the right people because the residents entrust their medical care and safety to the facility.

Claimant went home from work on November 8, 2021, and was told to stay home on November 9th. The employer called and terminated his employment. Claimant believes that they told him that he was being terminated because of pending charges in September of 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the December 14, 2021, unemployment insurance decision that found Bauman ineligible for unemployment insurance benefits for violation of a work rule is reversed.

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 Administrative Code rule 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).

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).

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. However, if the employer 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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The employer must show the final incident that resulted in the discharge was a current act of misconduct. Iowa Admin. Code r. 871-24.32(8); see *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). Johnson testified that the employer terminated claimant's employment because of an incident that occurred prior to his employment. Claimant did not report an incident with the police during his interview. The incident to which the employer referred did not appear on the claimant's background check and according to claimant's credible testimony, the charges had been dismissed. At the time of his interview, claimant appears to have known that the charges would not appear on his background check. The employer did not terminate claimant because he had been untruthful during the interview, as the charges from the incident did not appear on the background check. Additionally, the incident occurred over a year prior to his interview and employment. See *Greene*, 426 N.W.2d at 659.

The employer did not satisfy its burden of proof required to disqualify claimant from unemployment insurance benefits. Because employer failed to establish disqualifying misconduct prior to discharge, benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The December 14, 2021, unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



Alla R. Mintzer Zaprudsky
Administrative Law Judge

February 28, 2022

Decision Dated and Mailed

CC: Dwaine A Bauman, Claimant (by first class mail)
Healthcare of Iowa, Inc., Employer (by first class mail)
Natali Atkinson, IWD (by email)
Joni Benson, IWD (By AEDMS)

Case Title: BAUMAN V. HEALTHCARE OF IOWA, INC
Case Number: 22IWDUI0087
Type: Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Alla R. Mintzer-Zaprudsky". The signature is written in a cursive, flowing style.

Alla Mintzer-Zaprudsky, ALJ