

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL E PINEGAR
Claimant

ARCHER DANIELS MIDLAND CO
Employer

APPEAL 21A-UI-01131-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Daniel E Pinegar, the claimant/appellant, filed an appeal from the December 7, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 8, 2021. Mr. Pinegar participated and testified. The employer did not participate. Official notice was taken of the administrative record.

ISSUE:

Was Mr. Pinegar discharged for misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Pinegar began working for the employer in February 2020. He worked as a full-time line runner.

On July 30, 2020 Mr. Pinegar went into the break room. An employee who he had conflict with before was also in the break room. The other employee had been making comments to Mr. Pinegar for a few months alleging that Mr. Pinegar was using drugs and taking work away from the other employee. Mr. Pinegar had had a previous confrontation with the other employee and the other employee was written up but not Mr. Pinegar. Mr. Pinegar had reported the other employee to the employer. The employer had told Mr. Pinegar that the other employee had an anger management issue and suggested that he stay away from that employee to avoid any issues.

That day, Mr. Pinegar confronted the other employee in the break room because he was frustrated that the employer had not acted to stop the other employee from making comments to him. Mr. Pinegar and the other employee got into a loud shouting match. Mr. Pinegar and the other employee used profanity and the other employee poked Mr. Pinegar with his finger. Mr. Pinegar did not poke the other employee back. Other employees had to separate Mr. Pinegar and the other employee.

On August 3, the employer terminated Mr. Pinegar's employment. The employer told Mr. Pinegar, via phone, that he was discharged for misconduct for arguing and fighting at work. Mr. Pinegar had had no prior disciplinary record. The employer also terminated the other employee's employment.

REASONING AND CONCLUSIONS OF LAW:

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

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).

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. See 871 IAC 24.32(4).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995).

In this case, the conduct for which Mr. Pinegar was discharged was an incident of poor judgment. Mr. Pinegar was frustrated by the other employee's constant comments and by the employer's lack of action. While Mr. Pinegar began the July 30 confrontation, he did not respond to the other employee's finger poke in any physical way. The employer did not participate in the hearing and provided no evidence that mere loud arguing and the use of profanity is a violation of the employer's policy. An employee's use of profanity may constitute misconduct. The administrative law judge concludes that it does not in this case as the incident was an isolated one, it happened in the break room and Mr. Pinegar had no prior disciplinary record. The employer has not met its burden to establish misconduct. Benefits are allowed.

DECISION:

The December 7, 2020, (reference 01) unemployment insurance decision is reversed. Mr. Pinegar was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
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February 19, 2021
Decision Dated and Mailed

dz/kmj