

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN D ANDREWS
Claimant

PALMER & COMPANY
Employer

APPEAL 20A-UI-09917-BH-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/20
Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Code section 96.5(2)(a) – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(1)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Justin D. Andrews filed an appeal from the August 13, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held September 28, 2020. Andrews participated and testified. Palmer & Company (Palmer) participated through director of human resources Hanna Reinders, who testified.

ISSUE:

Did Palmer discharge Andrews for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Palmer hired Andrews on August 26, 2019. Andrews worked full time as a line feeder. Andrews's immediate supervisor was Avery Quincy. Palmer discharged Andrews on June 23, 2020, because of a positive drug test.

Palmer has a written policy that governs its drug-testing policy. It provided a copy to Andrews. The policy requires a drug test after an accident that results in injury that requires a report under Iowa Code chapter 88.

On June 2, 2020, Andrews was working when a coworker grabbed a pallet, which dropped onto his foot, causing an injury. Andrews had to go to MercyOne Siouxland Occupational Health due to his injury.

Palmer has a contract with MercyOne so that it performs Palmer's workplace drug-testing. Because Andrews was injured at work and a report under Iowa Code chapter 88 was required, Palmer required him to undergo a drug test. MercyOne collected a sample from Andrews and tested it. The test came back positive.

Palmer sent Andrews a certified letter informing him of the positive test result and that he had the right to have the split sample tested by another lab at his own expense. Andrews decided to exercise his right to have the split sample tested elsewhere. He reasoned that if the sample tested positive, the other one would also test positive.

After the deadline for Andrews to have the split sample tested at another lab passed, Palmer discharged him on June 23, 2020, because of the positive drug test.

REASONING AND CONCLUSIONS OF LAW:

The evidence establishes Palmer discharged Andrews from employment due to job-related misconduct.

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).

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.

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.

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). 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 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).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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).

The results of a positive drug test may constitute misconduct if the employer substantially complies with Iowa's private sector drug-free workplace law. Here, the evidence shows that Palmer substantially complied with section 730.5 because it had a written drug-testing policy that it provided to Andrews. The drug-testing policy requires testing if an employee sustains an injury that necessitates a report under Iowa Code chapter 88, which Andrews's June 2, 2020 injury did. Further, Palmer had MercyOne, a qualified entity, perform the test. Lastly, Palmer gave Andrews written notice of the positive test and of his right to have his split sample tested at another lab, at his own expense.

For these reasons, Palmer has met its burden to prove it discharged Andrews for misconduct under Iowa law. Benefits are denied.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The August 13, 2020 (reference 01) unemployment insurance decision is affirmed. Palmer discharged Andrews due to job-related misconduct. Benefits are withheld until such time as Andrews has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though Andrews is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if Andrews is eligible for such compensation for the week claimed.

This decision does not address whether Andrews is eligible for PUA. For a decision on such eligibility, Andrews must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is written over a light gray rectangular background.

Ben Humphrey
Administrative Law Judge

October 26, 2020
Decision Dated and Mailed

bh/sam

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.**
- For more information about PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>

- To apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-application>