

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON V MANGELS
Claimant

CONTINENTAL CEMENT COMPANY LLC
Employer

APPEAL 21A-UI-19416-ED-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 07/11/21
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 27, 2021, (reference 01) unemployment insurance decision that allowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on October 25, 2021. The claimant, Jason Mangels, did not participate. The employer, Jason Continental Cement Company LLC, participated through Jaime Reyes, Gary Shaffer and Troy Shehorn. Employer's Exhibits 1-13 were offered and received. The employer updated its mailing address for this decision to 301 East Front St., PO Box 690, Buffalo, IA 52728.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a maintenance mechanic. Claimant was employed from January 30, 2001 until June 10, 2021, when he was discharged from employment.

On June 2, 2021, the claimant was performing the task of removing a belt on the Silo 46 blower and failed to Lock Out/Tag Out the blower at the electrical disconnect and it remained energized and a hazard. The claimant did not complete a hazard risk assessment tri-fold prior to performing the work. The employee operating the silos deselected Silo 46 but a production ticket had already been completed in the system, so when the load order was given the cement was dispensed from Silo 46 causing the blower to engage which resulted in claimant's left thumb being trapped between the sheeve and the belt. The claimant had previously performed this task on other blowers without disconnecting the power source during the same shift. The claimant spoke with a co-employee to work around the Lock Out/Tag Out policy on June 2, 2021. Claimant admitted that he had been trained on the Lock Out/Tag Out procedures. See Exhibit Page 8.

The employer has a Safety Behavior Guidelines policy, last revised on August 6, 2018, which states Employees are expected to adhere to all aspects of the employer's Materials, Health, Safety and Environmental Programs. Employees are to adhere and comply with Lock Out/Tag Out procedures and other safety rules, policies or procedures while engaged in work. Non-compliance creates a potential to endanger life and/or cause serious bodily injury to an employee or other workers. Employees are trained that failure to comply with Lock Out/Tag Out procedures is a serious safety violation subject to immediate termination. Prior to June 2, 2021, the claimant had no warnings involving the Lock Out/Tag Out violations.

REASONING AND CONCLUSIONS OF LAW:

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

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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.

Further, 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). 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). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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 that the employer's testimony is credible.

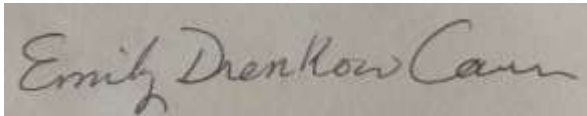
Prior to his discharge claimant had committed no known violations involving health and safety. Claimant's job duties included following the necessary and required guidelines that were in place for health and safety purposes.

To establish misconduct that will disqualify employee from unemployment compensation benefits, employer must prove conduct by employee consisted of deliberate acts or omissions or evinced such carelessness as to indicate wrongful intent. It should not be accepted as a given fact that an employer's subjective standards set the measure of proof necessary to establish misconduct; to do so skews procedure, forcing employees to prove that they are not capable of doing their job or that they had no intent to commit misconduct, thereby impermissibly shifting the burden from employer to employee. *Kelly v. Iowa Dept. of Job Service*, 386 N.W.2d 552 (Iowa App. 1986).

Fact that claimant, who was a maintenance mechanic since January 30, 2001, worked with another employee to not run the Lock out/Tag Out procedures on June 2, 2021, show his intent to violate procedure. The claimant had clear knowledge of the safety procedures to be followed. This intentional and deliberate violation of safety procedure disqualifies the claimant from receipt of unemployment benefits. The claimant's actions of continuing to fail to follow the employer's policies regarding safety on June 2, 2021, constitute an intentional and substantial disregard of the employer's interest and is indicative of a deliberate disregard of the employer's interests. *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). This recurrent negligence rises to the level of willful misconduct. As such, benefits are denied.

DECISION:

The August 26, 2021, (reference 05) unemployment insurance decision is reversed. Claimant was discharged from employment for job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.



Emily Drenkow Carr
Administrative Law Judge

November 08, 2021
Decision Dated and Mailed

ed/ol