

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDON E SCHMIDT
Claimant

AGRI STAR MEAT & POULTRY LLC
Employer

APPEAL 19A-UI-08307-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/22/19
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Brandon Schmidt (claimant) appealed a representative's October 15, 2019 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Agri Star Meat & Poultry (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 13, 2019. The claimant was represented by Charles Showalter, Attorney at Law, and participated personally. The employer participated by Laura Roney, Payroll/Human Resources Assistant; Dalana Heins, Safety Lead Foreman; Brice Evans, Facility Maintenance; and David Green, Beef Maintenance Mechanic. The employer offered and Exhibits One, Two, and Three were received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 23, 2018, as a full-time plumber. He signed for receipt of the employer's handbook on July 23, 2018. The handbook stated that the employer did "not tolerate any verbal or physical conduct by an employee which harasses, disrupts, or interferes with another's work performance or which creates an intimidating, offensive or hostile environment...". Harassment was a defined term in the handbook but disruption, interference, intimidation, and hostile environment were not defined.

On November 19, 2018, the claimant reported a work-related injury. The employer provided medical treatment for the claimant. At the end of his employment, the claimant was working without restrictions. He reported to his physicians that he had headaches and was irritable.

On January 15, 2019, the employer issued the claimant a written warning for a safety violation. On July 15, 2019, the employer issued the claimant a final written warning for inappropriate behavior when he threatened a co-worker. The claimant said, "I was just wondering if I could get over this desk and slit your throat before these two guys stopped me". The claimant thought

the co-worker was trying “to bait” him and he thought the words he said were a joke. Others in the room felt threatened. The employer notified the claimant that another infraction would result in termination from employment. The employer gave the claimant harassment policy training on July 15, 2019. The claimant signed for receipt of Agri Star Workplace Harassment Policy on July 15, 2019.

On September 10, 2019, a safety vehicle driver reported to the employer that the claimant drove the wrong way as he exited the parking lot and almost collided with the safety vehicle. The employer viewed a video recording and called the claimant in for a meeting. The claimant agreed that he drove out the wrong way but disagreed that he almost hit the safety vehicle. The employer issued the claimant a three-day unpaid suspension and warning.

After the issuance of the suspension, the claimant and others left the human resources office. The claimant saw a co-worker that he felt was not helpful to his job. He thought the co-worker's actions were intended to irritate him. The claimant said, “There’s that whiney little bitch”. The co-worker seemed shocked and nervous. The employer told the claimant that we do not talk to people that way and that his comment was not acceptable.

After the claimant collected his items for suspension, the employer called him back in for a conference. The employer terminated the claimant for violating the policy against “creating an intimidating, offensive or hostile environment”.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. He was warned about his offensive behavior in July 2019, and he was offensive again in November 2019. The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's October 15, 2019, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn