

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MIGUEL M PASCUAL
Claimant

APPEAL NO. 17A-UI-04731-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

OC: 04/02/17
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated May 2, 2017, reference 01, which denied unemployment insurance benefits, finding that the claimant was discharged from employment from work on April 6, 2017, for insubordination in connection with his work. After due notice was provided, a telephone hearing was held on June 14, 2017. Claimant participated. Although duly notified, the employer did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Miguel Pascual was employed by Wells Enterprises, Inc. from September 21, 2015 until April 3, 2017, when he was discharged from employment. Mr. Pascual was employed as a full-time production worker and was paid by the hour. His immediate supervisor was Robert Tenre.

Mr. Pascual was discharged based upon his conduct and the statements that he made to a company supervisor on April 3, 2017. On that date, Mr. Pascual noticed that a supervisor, in a location that Mr. Pascual passed through, was not wearing "safety glasses" while he was using a company computer to input or retrieve information. Because Mr. Pascual believed that company policy required all employees to be wearing safety gear while they were in the employer's facility, he told the supervisor that he should put his safety glasses on. The supervisor explained that he was using the computer and would put the glasses on when he was done, Mr. Pascual did not believe that explanation was sufficient, and again asked the supervisor to put the safety glasses on. Mr. Pascual believed the supervisor was setting a bad example and stated to the supervisor "inside here you are a supervisor, outside on the street you are nothing." The claimant's intent was to convey to the supervisor that he should be setting an "example" because he was a supervisor.

It appears that the supervisor considered Mr. Pascual's statements to be inappropriate and insubordinate, and reported the claimant's conduct. Mr. Pascual was initially suspended for a two-day period while the company investigated. The claimant was informed two days later that he had been discharged from his employment with the company. It appears that the employer believed the claimant's statement was insubordinate and a threat.

It is the claimant's position that he was only stating company safety rules as he knew them, and that he had repeated his understanding of the rule because the supervisor was not following the rule. Mr. Pascual denies any intention to be insubordinate or to threaten harm to the supervisor.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Miguel Pascual was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of

unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

The claimant was discharged based upon a complaint by a supervisor that Mr. Pascual had acted in an insubordinate and intimidating way when he brought to the attention of the supervisor that the supervisor was not following the company's eye safety policy. In his testimony, Mr. Pascual questioned the supervisor about the policy and whether the safety policy needed to be followed no matter what type of work an employee was doing at the time. Mr. Pascual also made a reference to the supervisor's job position within the company. The claimant's only intention was to emphasize because the supervisor held a supervisory position, employees would look to the supervisor as an example. Mr. Pascual denies making any statements that were intended to threaten the supervisor.

In this matter, the employer had not previously warned the claimant about any issues leading to separation and the employer did not provide any witnesses to testify at the hearing. The employer has not met its burden of proof to establish the claimant acted in deliberate violation of a known company policy. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The representative's decision dated May 1, 2017, reference 01 is reversed. Claimant was discharged under non-disqualifying conditions. Benefits are allowed, provided the claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/scn