

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL T CLEMENS
Claimant

GILCREST/JEWETT LUMBER COMPANY
Employer

APPEAL 20A-UI-13092-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/05/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On October 19, 2020, Michael Clemens (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated October 8, 2020 (reference 01) that denied benefits based on a finding claimant was discharged on July 3, 2020 for failing to perform satisfactory work when capable of doing so.

A telephone hearing was held on January 19, 2021. The parties were properly notified of the hearing. The claimant participated personally. Gilcrest/Jewett Lumber Company (employer/respondent) participated by HR/Payroll Manager Jeri Stoffel.

Employer's Exhibits 1-6 were admitted. Official notice was taken of the administrative record.

ISSUES:

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was August 22, 2005. Claimant worked for employer as a full-time driver/yard worker. In this position, claimant supervised drivers and oversaw delivery of products to clients. Claimant's immediate supervisors were Yard Foreman John Grimm and General Manager Gary Ehrisman. The last day claimant worked on the job was July 3, 2020. Claimant was discharged on that date.

Claimant was discharged due to repeated failure to follow guidelines made clear to him by employer. This included failing to properly prepare loads for each day, failing to follow and enforce employer's policies, and failing to properly maintain the yard. This included failing to clean weeds from the fence line for several weeks after being requested to do so; failing to timely prepare loads for delivery and to ensure drivers were working efficiently; and making sure he and drivers are wearing work boots as required, rather than tennis shoes. These issues hurt employer's

reputation with customers and caused potential liability for it. Claimant was warned and counseled several times on these issues, including in December 2019 and May 2020, before finally being discharged in July 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated October 8, 2020 (reference 01) that denied benefits based on a finding claimant was discharged on July 3, 2020 for failing to perform satisfactory work when capable of doing so is **AFFIRMED**.

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 provides in relevant part:

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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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 is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep’t of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp’t Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp’t Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions “liberally to carry out its humane and beneficial purpose.” *Bridgestone/Firestone, Inc. v. Emp’t Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). “[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant.” *Diggs v. Emp’t Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

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.*

The administrative law judge found the information provided by employer to be more credible and reliable than the information provided by claimant. The administrative law judge found claimant to be evasive at times in responding to questions, including often giving non-specific responses when asked whether incidents occurred as alleged by employer. In contrast, employer provided substantial contemporaneous documentation supporting its reasons for discharge. Factual findings were made accordingly.

Employer has carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Claimant was discharged due to repeated failure to follow guidelines made clear to him by employer. These issues hurt employer’s reputation with customers and caused potential liability for it. Claimant was warned and counseled several times on these issues, including in December 2019 and May 2020, before finally being discharged in July 2020. There is no indication that claimant was unable to follow the guidelines.

The administrative law judge finds claimant’s discharge was for a current act of substantial, job-related misconduct. Benefits must be denied.

DECISION:

The decision dated October 8, 2020 (reference 01) that denied benefits based on a finding claimant was discharged on July 3, 2020 for failing to perform satisfactory work when capable of doing so is **AFFIRMED**. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
Administrative Law Judge
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Fax (515) 478-3528

February 4, 2021
Decision Dated and Mailed

abd/mh

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.