

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW I MARR

Claimant

APPEAL 16A-UI-11262-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RELCO LOCOMOTIVES INC

Employer

OC: 09/18/16

Claimant: Respondent (1)

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

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the October 6, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that the employer had not provided sufficient evidence to show claimant was discharged for disqualifying misconduct. The parties were properly notified of the hearing. A telephone hearing was held on November 2, 2016. The claimant, Matthew Marr, participated. The employer, Relco Locomotives, Inc., participated through Tim Ash, HR manager; and Debra Pettit, chief legal officer, represented the employer. Employer's Exhibits 1 through 5 was received and admitted into the record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a welder/fabricator, from February 23, 2015, until September 21, 2016, when he was discharged for failing a random toolbox inspection. The employer maintains a tool lists stating the tools each employee is required to have with him every day at work. (Exhibit 5, page 39) This tool list is included in the Employee Handbook, and claimant signed a document acknowledging that he received the handbook and knew its contents when he began his employment. (Exhibit 4) On September 19, the employer inspected claimant's toolbox to see whether he had all of the required tools with him. Claimant was missing five tools and had four incomplete sets of tools. Claimant testified that some of the tools he was missing had been stolen, and he had loaned out other tools to coworkers.

Claimant testified this was the first random tool inspection he experienced during his employment.

Ash testified that claimant was discharged pursuant to the employer's progressive discipline system. On February 19, 2016, claimant received a written warning for arriving late to work. (Exhibit 1) On April 27, 2016, claimant received a suspension for attendance reasons. (Exhibit 2) The step following suspension in the progressive discipline system is termination. Neither party indicated that claimant had ever been warned for failing to have his complete tool requirements with him at work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Here, claimant had no prior warnings about failing to have all of his tools with him. The conduct for which claimant was discharged was merely an isolated incident of poor judgment. As the employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed. As claimant's separation from employment qualifies him for benefits, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The October 6, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. As claimant's separation from employment qualifies him for benefits, the issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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