

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JON L SMITH
Claimant

PRIES ENTERPRISES INC
Employer

APPEAL 19A-UI-07711-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/01/19
Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

The claimant/appellant, Jon L. Smith, filed an appeal from the September 20, 2019, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 23, 2019. The claimant participated personally. The employer sent in written documentation to the Appeals Bureau that it would not be participating in the scheduled hearing. The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibit A was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a team leader for the nine-inch press, and was separated from employment on August 12, 2019, when he was discharged.

The claimant had two periods of employment with this employer. He began his most recent period of employment in 2004. When he was hired, he was trained on employer rules and procedures. He was issued a written warning on June 17, 2019 following a heated exchange with another employee. On August 8, 2019, the claimant made an offensive comment to his human resources officer, which he stated was a joke. The claimant denied the comment was intended to be sexual in nature and attributed his conduct to side effects of his medication for a personal medical issue. The claimant indicated he had not been himself as a result of the medical condition. The employer informed the claimant he would be suspended for three days for the incident. The employer then discharged the claimant for the same incident.

Since separation, the claimant stated his personal medical issue continues to impact him emotionally and physically, and his ability to obtain full-time employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“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). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

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.

The undisputed evidence is the claimant made a blatantly offensive comment to a human resources representative on August 8, 2019. The administrative law judge was not persuaded by the evidence that the claimant's conduct was attributed to a medical condition or side effect from medication. The employer then suspended the claimant for three days in response to the comment. No evidence was presented that the suspension was pending further investigation, but rather for a definitive period. As such, the claimant was disciplined for the August 8, 2019 incident by way of his three-day suspension. Inasmuch as the employer had warned claimant

about the final incident on August 8-11, 2019 and there were no incidents of alleged misconduct thereafter, it has not met the burden of proof to establish that the claimant acted deliberately or negligently **after** the most recent warning. The employer has not established a current or final act of misconduct.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to a final or current act of job related misconduct. Accordingly, benefits are allowed.

REMAND: The issue of whether the claimant is able to and available for work due to personal medical issue is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The September 20, 2019, (reference 01) initial decision is reversed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

REMAND: The issue of whether the claimant is able to and available for work due to personal medical issue is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
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Decision Dated and Mailed

jlb/scn