

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES E HUNTER
Claimant

EMC ACQUISITIONS INC
Employer

APPEAL 22A-UI-06162-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/06/22
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 March 1, 2022, (reference 01) unemployment insurance decision that allowed benefits based upon the determination that claimant was discharged, but not for disqualifying misconduct. The parties were properly notified of the hearing. A telephone hearing was held on April 20, 2022. The claimant, James E. Hunter, participated personally. The employer, EMC Acquisitions, Inc., participated through Brian Latusick. Administrative Law Judge David Steen observed but did not participate. Employer's Exhibits 1 through 3 were admitted. The administrative law judge took official notice of the administrative 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 in the stock room from September 6, 1977, until this employment ended on January 31, 2022, when he was discharged.

On January 26, 2022, claimant was in the stock room performing his job duties. A coworker, Chris Thompson, came to the stock room to retrieve a cart. Claimant told Thompson that no cart was available. Thompson began to take a cart that had items on it already. He said he would simply remove the items and take the cart. Claimant told him he could not do that. When Thompson began to attempt to take the cart, the two pulled on the cart from opposite ends. They exchanged words. Soon, Thompson lost patience and left, saying he was going to ask his foreman for a cart. Claimant told him that was a good idea.

Thompson approached a supervisor after the interaction and reported that claimant had used the cart to back him into a wall. He stated he felt intimidated by claimant's conduct. The employer spoke with claimant about the incident, and claimant admitted to pulling on the cart with Thompson but denied intending to intimidate him or hurt him.

The employer suspended claimant pending investigation. It conducted the investigation by seeking witness statements. However, all of the potential witnesses stated they did not see or hear the incident. The employer concluded that the incident was sufficiently severe to warrant discharge because it was classified as a Class I Violation. Claimant was informed of his discharge in person on January 31, 2022.

The employer has a policy that classifies fighting with or assaulting another employee as a Class I Violation, which would result in termination. This policy appears in the employee handbook which is issued to employees at the time of hire. Claimant did not know that the conduct in which he engaged constituted a Class I Violation, nor did he know what the term "Class I Violation" meant. Claimant had received no prior warnings for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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, 394–95 (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.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events. Claimant was the only first-hand witness to the events that occurred on January 26, 2022. The administrative law judge found his testimony to be credible because it matched the written statement he provided to the employer. His testimony was also credible because he did not deny engaging in an argument with Thompson and engaging in a pulling match over the cart. His acknowledgement of his own participation in the incident bolsters the credibility of his testimony. The employer's witness was not on site on the day of the incident and did not witness the incident or the parties involved on January 26, 2022.

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.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment. While claimant likely should not have engaged in a pulling match with Thompson over the cart, he did not intend to intimidate or hurt Thompson. Additionally, claimant received no prior warnings about similar conduct. He did not know what a Class I Violation was, nor did he know that his conduct was classified as a Class I Violation and warranted certain

consequences, specifically termination. 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. Inasmuch as 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. No disqualification is imposed.

Because the separation is not disqualifying, the issues of overpayment, repayment, and participation are moot.

DECISION:

The March 1, 2022, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and participation are moot.



Alexis D. Rowe
Administrative Law Judge

April 26, 2022
Decision Dated and Mailed

ar/kmj