

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NECCY MARABE
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 22A-UI-02784-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/12/21
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 5, 2022, (reference 01) unemployment insurance decision that denied benefits based upon her discharge from employment for job related misconduct. The parties were properly notified of the hearing. A telephone hearing was held on February 24, 2022. The claimant, Neccy Marabe, participated personally. The employer, Tyson Fresh Meats Inc, participated through Tammy Story.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time working in the boneless loin area. Claimant was employed from October 9, 2015 until June 17, 2021. Claimant's immediate supervisor was Rudolpho Sanchez. Claimant was discharged on June 17, 2021. Claimant's superintendent, Abel Sihnhopain and Liseth Martinez were present for the claimant's discharge. The claimant violated the drug and alcohol policy.

The employer does have a written drug and alcohol policy and procedure. Team members who test positive for illegal drugs or alcohol may be eligible for a rehabilitation program under the Options Portion of the policy. Team members may participate in the options portion one time as long as it is the first time they have tested positive. Team members are subjected to drug and alcohol testing if reasonable suspicion exists, where a supervisor reasonably suspects impairment due to using or being under the influence of drugs or alcohol while on the work premises according to applicable law. Team members are offered different options including termination and professional rehabilitation which requires a leave of absence. The third option is self rehabilitation. Upon return to work, a positive test will result in termination.

Claimant's supervisors had felt they had reasonable suspicion that claimant was under the influence. The team members felt she was possibly under the influence because she was

stumbling, fell, sleepy, slow reaction, eyes watery, eyes were droopy, slurred speech. Reasonable suspicion form was documented and she was tested for substances. The test came back positive for methamphetamines. The test was sent to an independent lab which came back for a second test as positive as well on July 1, 2021. On July 1, the three options were discussed with claimant (termination, professional rehabilitation and self rehabilitation). Claimant choose self rehabilitation. On July 30, claimant returned back to work after her period of rehabilitation and was tested again. She tested positive for methamphetamines. Those results were sent back to an independent lab. On August 13, 2021, the lab results were returned positive for methamphetamine. On August 13, 2021 the claimant was terminated per the company's drug and alcohol policy.

REASONING AND CONCLUSIONS OF LAW:

As a preliminary matter, I find that Claimant did not quit. Claimant was discharged from employment.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of

misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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 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). 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. 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). 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.

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 of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000)(fact that claimant, who was a snowplower, had two accidents involving utility lines within three days did not constitute misconduct such as would disqualify claimant from receiving unemployment benefits; there was no evidence that claimant intentionally or deliberately damaged utility lines or violated any traffic laws, and there was uncontroverted evidence that accidents were beyond claimant's control).

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.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the Administrative Law Judge finds Ms. Story's testimony more credible than Ms. Marabe.

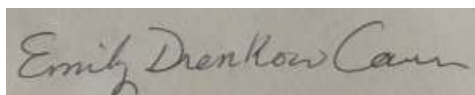
To establish misconduct that will disqualify employee from unemployment compensation benefits, employer must prove conduct by employee consisted of deliberate acts or omissions or evinced such carelessness as to indicate wrongful intent. It should not be accepted as a given fact that an employer's subjective standards set the measure of proof necessary to establish misconduct; to do so skews procedure, forcing employees to prove that they are not capable of doing their job or that they had no intent to commit misconduct, thereby impermeably shifting the burden from employer to employee. *Kelly v. Iowa Dept. of Job Service*, 386 N.W.2d 552 (Iowa App. 1986).

The employer has proven that the claimant acted in any deliberate way to breach the duties of obligations of her employment contract. The claimant testing positive to substance upon her return to work on July 30, was willful or wanton action which was a deliberate violation or disregard of standards of behavior which the employer has the right to expect of claimant. The employer proved that claimant acted with 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.

As such, employer has proven that claimant was discharged for a current act of job-related misconduct that would disqualify her from receiving benefits. Benefits are denied.

DECISION:

The January 5, 2022, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for disqualifying conduct. Benefits are denied.



Emily Drenkow Carr
Administrative Law Judge

March 14, 2022
Decision Dated and Mailed

ed/kmj