

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COREY S NELSON

Claimant

APPEAL 19A-UI-09493-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ORSCHELN FARM & HOME

Employer

OC: 11/03/19

Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Orscheln Farm & Home (employer) appealed a representative's November 22, 2019, decision (reference 01) that concluded Corey Nelson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 30, 2019. The claimant participated personally. The employer participated by Michael Jenkins, Store Manager, and Nissa Wennihan, Support Manager/Seasonal Department Head. The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 1, 2019, as a full-time sporting goods department head. The employer had an online handbook but the claimant did not sign for receipt of it. The employer had an "open door" policy. The policy meant that employees could talk with a supervisor without fear of repercussion.

On October 13, 2019, the claimant and another employer agreed to exchange job duties for the last hour of the shift. When the supervisor told the claimant that he needed her permission to switch jobs, he said that he was not aware of that rule. On October 18, 2019, the employer issued the claimant a verbal warning that was reduced to writing. The document indicated the claimant responded to his supervisor, "I don't need your permission". The claimant told the employer the statement in the document was untrue. He signed the warning but was not given a copy. The employer notified the claimant that further infractions would result in termination from employment.

On or about October 23, 2019, the support manager reported a conversation she had with the claimant to the store manager. The support manager reported that she asked the claimant if he was trying get fired. The claimant replied, "Yes". She asked him how he was going to pay his bills. The claimant answered, "playing video games".

On November 6, 2019, the store manager terminated the claimant for his answers to the support managers two questions on October 20, 2019. The claimant denied having that conversation with the support manager.

The claimant filed for unemployment insurance benefits with an effective date of November 3, 2019. The employer sent a statement to be used in place of participation in the fact-finding interview on November 21, 2019. The employer did not identify or submit the specific rule or policy that the claimant violated which caused the separation. An employee with firsthand information was not provided for rebuttal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(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(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 Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on October 20, 2019. The claimant was not discharged until November 6, 2019, seventeen days later. The incident and the discharge are too remote.

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

In this case the employer terminated the claimant for allegedly saying "yes" and "playing video games". The employer would reasonably show some sort of policy regarding this language or behavior, that the claimant signed for that policy, and a previous warning for violating that same policy. The employer provided none of those things in this case. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's November 22, 2019, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn