

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAN A PATTERSON

Claimant

APPEAL 16A-UI-10218-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINCOLNWAY ENERGY LLC

Employer

OC: 08/21/16

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 12, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on October 4, 2016. The claimant participated personally. Joe Gardner testified on behalf of the claimant. The employer participated through Darrel Boll, director of operations. Kristine Strum and Chris Cleveland testified for the employer. 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 overnight shift, and was separated from employment on August 22, 2016, when he was discharged.

The claimant began employment in 2007 and had been a team leader for several years before separation. The evidence is disputed as to whether the claimant was coached or disciplined but between March 2016 and July 1, 2016, the employer met with the claimant on three occasions. The claimant did not interpret the meetings to be disciplinary in nature, and was unaware his job was in jeopardy.

On March 3, 2016, the employer met with the claimant to discuss how to operate the fermentation machine and to ensure proper documentation was being completed. The claimant indicated the meeting was company-wide and not directed specifically at him. On June 13, 2016, there was another discussion between the claimant and his manager, Chris Cleveland in which Mr. Cleveland discussed team responsibility and communications with him by phone. Then on July 1, 2016, the employer met again with the claimant and referenced how cook operator, Joe Gardner, seemed unhappy. (Mr. Gardner was unhappy working overnights and the effect it had on his family life.) The employer revisited the fermentation process as well. On August 1, 2016, the employer learned the claimant had left a training session unexpectedly, which the claimant indicated was due to a grind mill being down and needing immediate attention.

The employer reported the final incident when the employer received complaints from an employee, specifically, Cody Finger, about the claimant's actions from the weekend of August 5, 2016. It was reported that the claimant was being negative, not training, not helping perform work, and had allowed an employee to watch a movie instead of perform operations. Mr. Finger did not attend the hearing or offer a written statement for the hearing. None of the employer witnesses who testified observed the conduct in question. The claimant denied being negative or refusing to help employees. The employee who reportedly was watching the movie, Joe Gardner, attended the hearing and indicated he never watched a movie while working. About two weeks prior to the claimant's discharge, he had requested a meeting with Chris Cleveland to meet with Cody Finger, but no meeting was ever scheduled.

The employer conducted a meeting on August 10, 2016, and presented the claimant a written warning. The employer told the claimant they needed to see immediate improvement in his conduct. No specific outline or objectives or timeline for improvement were defined. The employer reported it continued to receive calls and complaints regarding the claimant's ongoing conduct, but could not offer specific dates or calls or events that occurred after the claimant was presented his written warning. On August 22, 2016, while all upper management was on site, the employer decided that the claimant should be discharged.

REASONING AND CONCLUSIONS OF LAW:

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

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(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.

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the 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.

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

The credible evidence presented is the claimant was issued a written warning on August 11, 2016 related complaints the employer had received about the claimant's negativity and management of his team. The employer indicated it had multiple complaints from multiple people but could not specifically identify a single event after the warning was issued, between the period of August 11 and the claimant's discharge. Further, the employer presented no first hand witness of any incidents for which the claimant was discharged for. Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer. Inasmuch as the employer had warned the claimant about the final incident on August 11, 2016, after reportedly receiving multiple complaints, and there were no incidents of 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, and, without such, the history of other incidents need not be examined. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. Benefits are allowed.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law.

DECISION:

The September 12, 2016, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs