

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RODNEY L EXLINE
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 18A-UI-02806-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/21/18
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 23, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 28, 2018. Claimant participated. Employer did not participate.

ISSUE:

Was the claimant discharged due to job connected misconduct sufficient to disqualify him from receipt of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a material handler/forklift operator beginning on November 13, 1986 through January 22, 2018, when he was discharged.

On January 17, 2018, the claimant was parked in the employee parking lot finishing his meal break waiting to go back into the plant to finish his work day. Shawn, a coworker pulled into the parking spot opposite the claimant so that their cars were parked nose-to-nose. Shawn was playing his car radio so loudly the metal in the claimant's car was shaking. The claimant flicked his headlights at Shawn. Shawn flicked his headlights back. Shawn and the claimant were friends. The claimant got out of his car walked over to the side of Shawn's car to walk back into work with him. Shawn's car window was partway down. The claimant said to Shawn something to the effect of I am going to take that radio out of your car if you do not turn the volume down. Shawn became upset and got out of his car and started verbally attacking the claimant. The claimant was shocked by Shawn's behavior. Shawn then told the claimant that he had not "kicked an old white man's ass sober in a long time but I am going to now." The claimant never touched Shawn, threatened Shawn or tried to keep Shawn trapped inside his car. Shawn overheard the claimant telling a coworker, Val, that he was going to human resources to complain about Shawn's loud radio and Shawn complained to human resources.

Initially the employer told the claimant they had video of him grabbing Shawn but later admitted there was no video of the incident. The employer told the claimant he was being discharged for restraining Shawn in his car.

The claimant was a thirty-two year employee with no history of discipline for anything at all when the employer discharged him.

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, 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).

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.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer presented no evidence to support any of Shawn’s allegations. The claimant was a thirty-two year employee with no disciplinary history at all. Claimant denies threatening or touching Shawn and denies pinning Shawn in his car. The claimant was a credible witness. As the employer has not proven any misconduct on the part of the claimant, benefits are allowed.

DECISION:

The February 23, 2018, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs