

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HAL M SMITH
Claimant

LAMONT LTD
Employer

APPEAL NO. 17A-UI-10409-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/10/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 3, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 30, 2017. Claimant participated personally. Employer participated by Chelsea Wallace and Steve Ringold. Employer's Exhibits 1-4, and 6-9 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 8, 2017. Employer discharged claimant on September 11, 2017 because claimant allegedly entered a meeting carrying a pair of scissors, waving them in a menacing manner and having a crazed look in his eyes.

Claimant worked as a maintenance technician for employer, performing a variety of duties. Claimant also had a CDL. Claimant's job did not involve over-the-road trucking. On September 6, 2017, employer asked claimant if he would drive a truck to New York City with some supplies. Three people asked claimant if he'd be willing to make the drive. Claimant was very vociferous in his unwillingness to drive, commenting about going over the George Washington Bridge and the kind of people and crimes that occur in New York City. The three representatives of employer were taken aback by claimant's reasoning and how aggressive he was with not wanting to participate.

The next day, these same people asked a co-worker of claimant if he'd go on the trip to NYC. The person conditionally agreed, but stated that he thought claimant would be willing to go with him. Claimant was called to the small meeting room where people were making plans, but by the time he arrived at the meeting room, the people in the room had decided that it was better if claimant didn't go. Claimant was told that there was a private meeting and he wasn't needed.

Minutes later claimant's co-worker thought he'd convinced the other parties to let claimant travel with him to New York City. He went out to visit claimant and ask if he would go on the trip with him. Claimant was working, and by the time he'd finished what he was working on, it was decided that the co-worker would take his wife on the trip and not claimant. Claimant came into the small meeting room with scissors in his hand. Claimant had been working with the scissors and brought them into the room when he came. Claimant came into the room, and when he opened the door it knocked into claimant's co-worker. This was jarring to those in the room, although not to the co-worker. Claimant was holding large scissors when he came into the room. He was clamping the scissors open and shut and pointing them in the direction of his supervisor. He said nothing, and left the room after he was asked to do so.

People in the room wrote that claimant had a crazed look in his eyes and didn't say anything when he was in the room. Women in the room were frightened by claimant's activities and scurried behind claimant's supervisor to be away from claimant.

Claimant was put on a three day suspension after the incident. After further discussions with those involved in the incident, claimant was terminated for his actions.

Claimant had never received a warning for improper or aggressive behavior to his co-workers prior to his termination.

Claimant stated that he believed he was terminated because a couple days earlier he'd embarrassed his supervisor.

REASONING AND CONCLUSIONS OF LAW:

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

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 Ct. 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. *State v. Holtz*, 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. *State v. Holtz*, Id.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning aggressive and assaultive behavior. The gravity of the incident is the deciding factor in this matter. Multiple women who were in the room stated through documents submitted that they were frightened by claimant's actions. This cannot be discounted by the administrative law judge. Employer's other first-hand witness also stated that claimant was aggressively waving the scissors in his hands while saying nothing. This is not appropriate in a workplace environment.

The last incident, which brought about the discharge, constitutes misconduct because claimant's actions amounted to a threat of violence to those in the room. Although claimant states that there was no intent on his part, no explanation for claimant's actions has been

offered. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated October 3, 2017, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn