

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARWAN H SAADIQ
Claimant

CONSUMER SAFETY TECHNOLOGY LLC
Employer

APPEAL 22A-UI-01915-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/07/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On December 20, 2021, Marwan Saadiq (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated December 16, 2021 (reference 01) that disqualified claimant from receiving unemployment insurance benefits based on a finding he was discharged on November 10, 2021 for violation of a known company rule.

A telephone hearing was held on February 11, 2022. The parties were properly notified of the hearing. The claimant participated personally. Former coworker Clayton Couchman participated as a witness for claimant. Consumer Safety Technology LLC (employer/respondent) did not appear or otherwise participate. Official notice was taken of the administrative record.

ISSUES:

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time sales representative. In this position claimant sold breathalyzer devices to customers and assisted them in finding mechanics to install them in their vehicles. Claimant's first day of employment was in October 2017. The last day claimant worked on the job was November 10, 2021. Claimant was discharged at that time.

Claimant was discharged by an HR representative named Christine and his former supervisor, Britney Dudley. Claimant was told the reason for his discharge was a call he made to a service center a couple days prior using his personal cell phone. On that date claimant was on a three-way call with a customer and a service center employee. The service center employee refused to install a breathalyzer for the customer and was rude to claimant and the customer during this call. After the call was over claimant used his personal cell phone to call back the service center employee and told him in no uncertain terms not to talk to him or his customers that way.

It was not uncommon for sales representatives to use their personal cell phones to contact service centers or for these calls to at times be confrontational. Supervisors were aware of and actually encouraged sales representatives to use their personal cell phones to make sales. Supervisors were aware of and did not discipline sales representatives when calls at times became confrontational. To the contrary, it was not uncommon for supervisors to make light of such calls. Claimant had never previously been counseled or disciplined for using his personal cell phone or having confrontational calls with service centers.

Claimant made a complaint of discrimination just a couple days prior to his being discharged. The temporal proximity of this complaint and claimant's discharge suggests his discharge may have been motivated by the complaint.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated December 16, 2021 (reference 01) that disqualified claimant from receiving unemployment insurance benefits based on a finding he was discharged on November 10, 2021 for violation of a known company rule is REVERSED.

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 provides in relevant part:

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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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).

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 is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).


Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Claimant was discharged based on conduct that employer was aware of and even encouraged and which it did not discipline other sales representatives for. Claimant was therefore not on notice that this conduct was a violation of employer's policies. An employee cannot deliberately violate a policy or standard of behavior when he is not on notice that such conduct is prohibited.

Furthermore, the temporal proximity of claimant's complaint of discrimination and his discharge also indicates his discharge was motivated at least in part by this complaint. To the extent claimant's discharge was motivated by this complaint, a complaint of discrimination does not constitute disqualifying misconduct and is in fact a protected activity under state and federal civil rights laws. See *i.e.* Iowa Code § 216.11.

DECISION:

The decision dated December 16, 2021 (reference 01) that disqualified claimant from receiving unemployment insurance benefits based on a finding he was discharged on November 10, 2021 for violation of a known company rule is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account is subject to charge.



Andrew B. Duffelmeyer
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March 1, 2022
Decision Dated and Mailed

abd/abd