

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

NICHOLAS E VALENCIA
Claimant

APPEAL NO. 19A-UI-02897-S1

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE TRUCK EQUIPMENT CO
Employer

OC: 03/10/19
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Nicholas Valencia (claimant) appealed a representative's March 27, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Hawkeye Truck Equipment Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for April 26, 2019, in Des Moines, Iowa. The claimant participated personally. The employer participated by Craig Steinkamp, Service Manager. Exhibit D-1 was received into evidence.

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 June 5, 2015 as a full-time mechanic. He signed for receipt of the employer's handbook when he was hired.

The employer issued the claimant verbal warnings for vaping and using his cellphone at work. On February 25, 2019, the employer warned the claimant that his job was in jeopardy if he continued to use his electronic cigarette at work. On March 11, 2019, the employer issued the claimant a written warning for vaping at working. The employer told the claimant he would be terminated if it happened again.

On March 11, 2019, the service manager met with the claimant and other employees regarding a new policy regarding cellphones. Employees had to leave their cellphones in a box when they arrived at work or not bring them to work. On March 11, 2019, the claimant walked the phone to his car with the service manager.

On March 12, 2019, the claimant told the service manager he left his cellphone at home. In the afternoon the claimant had his cellphone. His girlfriend brought it to him at lunchtime and he secreted it in his locker. The claimant knew that his locker was not an approved place to leave

his phone. The service manager discovered the claimant's noncompliance and told him that he had to follow the rules from that day on.

On March 13, 2019, the claimant arrived at work with his cellphone visible in his pocket. The service manager asked him if he was going to follow the policy. The claimant indicated he was not. The service manager terminated him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was 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(4) provides:

(4) Report required. The claimant's statement and 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's March 27, 2019, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs