

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN J CLEMONS
Claimant

DECK SUPPLY SERVICES LLC
Employer

APPEAL 22A-UI-05293-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/30/22
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On February 22, 2022, Deck Supply Services (employer) filed an appeal from the February 18, 2022, reference 02, unemployment insurance decision that allowed benefits based upon the determination Justin J. Clemons (claimant) was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing held by telephone on April 8, 2022. The claimant did not respond to the hearing notice and did not participate. The employer participated through Jody Struve, Manager, and Ian Ewers, Production Manager. The employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?

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 Lead Painter beginning on August 17, 2020, and was separated from employment on January 31, 2022, when he was discharged. The employer has a policy that prohibits disrespect of management or any other obscene or abusive behavior. It states disciplinary action up to and including termination may occur.

While the claimant performed his job functions well, he had a history of poor interactions with his co-workers and management. The claimant regularly became angry and used profanity. He

had received numerous written and verbal warnings. The employer issued the claimant's only written warning on April 12, 2021, for "Disrespecting fellow employees," and warned if the behavior continued, he could subject to further discipline. (Exhibit 1)

The most recent warning was a verbal warning the week before he was discharged. During that warning, Ian Ewers, Production Manager, did not tell the claimant that his job was in jeopardy or that any further incidents would result in discharge. The claimant was a good worker, despite his conduct, and the employer was having difficulty finding employees, so they tried to work with him.

The final incident occurred on Friday, January 28, 2022. The claimant and his co-worker Heather had another verbal altercation. The claimant burst into Ewers' office, used profanity and stated that Heather was treated better than other employees. The claimant also accused Ewers of not doing his job and said he was going to look for another job. Ewers granted the claimant's request to leave early.

Ewers spoke to Jody Struve, Manager, about the situation. The claimant had engaged in similar behavior in the past without being discharged; however, this time Struve told Ewers that if the claimant wanted to find another job, he could just leave. The claimant reported to work and was 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. Benefits are allowed.

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.

...

(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 of misconduct 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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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. However, if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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." A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The employer has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer has accepted the claimant's arguments with others and use of profanity throughout his employment. While he was issued warnings, he continued to engage in the conduct and was not suspended or discharged. He was not on notice that further incidents could result in his discharge or that his behavior had to change to maintain employment.

Additionally, the only difference between the final incident and prior incidents was the claimant's statement that he was looking for another job. This indicates the final incident was not the claimant's argumentative behavior and profane language on January 28, but the statement that he was looking for another job. Struve's comment to Ewers also supports this conclusion. An at-will employee looking for a new job is not considered disqualifying misconduct. Benefits are allowed.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

DECISION:

The February 18, 2022, reference 02, unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.



Stephanie R. Callahan
Administrative Law Judge

June 21, 2022
Decision Dated and Mailed

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