

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KAWUNDA J MOGGA

Claimant

TPI IOWA LLC

Employer

APPEAL NO. 14A-UI-12194-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/26/14

Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 19, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 16, 2014. Claimant participated personally. Employer participated by Danielle Williams. Interpretive services were provided at the court's request by Magdy Salama.

ISSUES:

Whether claimant was discharged for misconduct.

Whether claimant is able and available for work.

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 October 27, 2014. Claimant was injured at work. Claimant did not stay in good contact with employer while he was away from work with his injury. Claimant did visit employer's worker's compensation doctor on multiple occasions.

Employer stated that they received a doctor's note sometime in October from their doctor indicating that claimant was on restrictions. Employer did not provide that note nor did it provide any other doctor's notes.

Employer sent a certified letter to claimant on November 11, 2014 stating claimant needed to be in touch with employer by November 18, 2014 or employer would assume that claimant had abandoned his job. Someone signed for this certified letter on November 13, 2014.

Claimant, through his interpreter, read into evidence a doctor's note from November 17, 2014 stating that claimant could return to work on November 24, 2014 without restrictions. Employer stated that they did not have this document in their files, but acknowledged that it might exist. Employer stated that they had a doctor's note from November 24, 2014 stating that claimant could return to work on that date without restrictions. By this time claimant had already been terminated as he had not been in contact with work by November 18, 2014.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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), (8) provides:

(4) Report required. The claimant's statement and the 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.

(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.

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. 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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*, 462 N.W.2d at 737. 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).

Although employer labeled the job separation as job abandonment or a voluntary quit by claimant, claimant desired to continue to be employed. Claimant reasonably believed that the doctor's note he'd received on November 17 would be forwarded by the company's doctor to the company and would relieve him of the need to show for work until November 24, 2014. In any event, claimant's actions were certainly not a willful or wanton disregard of employer's interests.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning attendance. The Administrative Law Judge finds claimant's testimony very credible as to the doctor's note that he'd received from the company doctor. The court believes that claimant, understandably, thought employer was on notice, from employer's own doctor, that claimant would not return to work until November 24, 2014. Claimant's visit to employer's doctor was timely and claimant's notice is made more credible by the subsequent doctor's note to employer, which employer acknowledged receiving, reiterating the allowance of claimant to return to no restriction employment on November 24, 2014.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant's actions in not showing up for work were not intentional; rather they were following the directives of the company's doctor. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

As claimant was fully released to return to work on November 24, 2014 and claimant has attempted to gain employment, claimant is able and available for work.

DECISION:

The decision of the representative dated November 19, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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