IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

Dewan Jones Claimant **Bowood Company, LLC** Employer	**DIA APPEAL NO. 22IWDUI0077** **IWD APPEAL NO. 22A-UI-00618** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: April 11, 2021** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant, Dewan Jones, filed an appeal from the November 16, 2021 (Reference 02) unemployment insurance decision that denied benefits based upon a determination that Claimant was discharged for conduct not in the best interest of his employer. A telephone hearing was held on February 11, 2022. Claimant appeared on his own behalf and testified. Employer, Bowood Company, LLC, appeared through a representative who testified. The entire administrative file was admitted into the record. The matter is now fully submitted.

ISSUE(S):

Was the separation 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:

On April 28, 2021, Claimant commenced employment with Employer as a fulltime construction laborer. This employment lasted until September 22, 2021, when Employer discharged Claimant. Claimant subsequently filed for unemployment benefits, and in a November 16, 2021 decision, the Department denied benefits because its records indicated Claimant was discharged for conduct not in the best interest of Employer. November 16, 2021, Decision, at p. 1.

Claimant appealed. At the hearing, Employer's representative testified Claimant's was separated from the company due to a material safety violation. At some point during the week prior to the separation, Employer had two employees at a residential construction jobsite, one of which was Claimant. The other employee testified that, while he was in a porta potty, the restroom was shot with a nail gun. Since such an incident could likely not have been an accident because the restroom was away from the rest of the jobsite and since Claimant was the only other employee working, Employer concluded Claimant shot the porta potty with a nail gun intentionally (likely as a prank), and it ended his employment because of how severe the safety violation was. There

was also discussion of how Claimant was not consistently working 80 hours a week since his hiring, but all agree this was not the reason for the separation (as Employer had not even directly talked to Claimant about it). The Employer also did not have details of the reasons for the lower hours at the hearing. In response, Claimant stated he did not shoot the nail gun at the porta potty, and had no knowledge of the claimed incident. He speculated he was let go due to Employer's lack of work, which Claimant testified was the stated reason during the separation conversation, In response, Employer indicated it does have work and, in fact, is having a hard time hiring. It just could not let such a violation "go."

For clarity, and as discussed more fully below, Employer has not proven Claimant engaged in any safety violation because nobody with personal knowledge of the incident appeared to testify concerning the matter and because Claimant denies it. This is not sufficient to establish the incident, particularly since there is nothing in the record to indicate why the other employee thought the hit to the restroom was a nail versus a rock or stick or whether there were other contractors on the jobsite that could have caused it. In short, the Tribunal does not know what occurred.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

"The purpose of [Iowa's] unemployment compensation law is to protect from financial hardship workers who become unemployed through no fault of their own." Bridgestone/Firestone, Inc. v. Employment Appeal Bd., 570 N.W.2d 85, 96 (Iowa 1997). As a result, the governing employment provisions "should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment." Cosper v. Iowa Dept. of Job Service, 321 N.W.2d 6, 10 (Iowa 1982).

As part of the statutory framework, an individual is disqualified from receiving unemployment benefits when he or she has been discharged for "misconduct." Iowa Code § 96.5(2). "Misconduct" is defined by the governing regulations to be "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." 871 Iowa Administrative Code § 24.32(1)(a); see also Freeland v. Employment Appeal Board, 492 N.W.2d 193, 196 (Iowa 1992) (noting that "the agency rule definition is an accurate reflection of legislative intent"). In explaining what this means, the governing regulation states:

> 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.

871 I.A.C. § 24.32(1).

Importantly, "[m]isconduct serious enough to warrant discharge of an employee is not necessarily serious enough to warrant denial of unemployment benefits." Henry v. Iowa Dept. of Job Service, 391 N.W.2d 731, 734 (Iowa App. 1986). In fact, "[w]hat constitutes misconduct justifying termination of an employee, and what is misconduct which warrants denial of unemployment benefits are two separate decisions." Brown v. Iowa Dept. of Job Service, 367 N.W.2d 305, 306 (Iowa App. 1985). By statute, "[t]he employer has the burden of proving a claimant is disqualified for benefits." Bartelt v. Employment Appeal Bd., 494 N.W.2d 684, 686 (Iowa 1993) (citing Iowa Code § 96.6(2)). Finally, "[w]hile 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." 871 I.A.C. § 24.32.

In this case, no dispute exists Employer terminated Claimant's employment. This was not a quit, and as such, the dispositive issue is whether Employer has proven sufficient misconduct. On balance, and based *solely* on the record, Employer has not carried its burden of proof because, while the alleged safety violation of intentionally shooting a nail gun at an occupied porta potty is conceptually enough to prove disqualifying misconduct, there is not enough proof to indicate Claimant did so. Claimant denies such, and Employer had no one with personal knowledge to explain how it occurred and discount other potential causes like other contractors at the jobsite or the bathroom being hit by something else. The violation could have happened, but the record does not prove it did. As such, however understandable the Employer's action, there is insufficient evidence of misconduct. Further, the fleeing references to absenteeism are not independently sufficient to establish misconduct because this was not the reason for the separation and was not fully detailed at the hearing. Accordingly, Department's decision, and it must be REVERSED.

DECISION:

The November 16, 2021, (Ref 02) unemployment insurance decision is REVERSED. Claimant is eligible to receive benefits. Any benefits claimed and withheld on this basis shall be paid.

Jonathan M. Gallagher
Administrative Law Judge

February 15, 2022

Decision Dated and Mailed

Cc: Dewan Jones, Claimant (by first class mail)
Bowood Company, LLC, Employer (by first class mail)
Natali Atkinson, IWD (by email)
Joni Benson, IWD (By AEDMS)

Case Title: DEWAN JONES V. BOWOOD COMPANY LLC

Case Number: 22IWDUI0077

Type: Proposed Decision

IT IS SO ORDERED.

Jonathan Gallagher, Administrative Law Judge