

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

VINCENT D BOWIE
Claimant

APPEAL NO. 18A-UI-10840-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMEGA PROCESSING SOLUTIONS LLC
Employer

OC: 10/07/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Omega Processing Solutions, LLC (employer) appealed a representative's October 29, 2018, decision (reference 02) that concluded Vincent Bowie (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 19, 2018. The claimant participated personally. The employer participated by Scott Halpin, Director of Human Resources. 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 February 11, 2018, as a full-time account executive. The claimant signed for receipt of the employer's electronic handbook on February 9, 2018. The handbook has a section on professionalism and ethics and states, "I will adhere to simple truth and integrity and will not engage in any misleading or deceptive act or sales practices."

When the claimant left his previous job, he stopped by client's businesses, let them know he was no longer working for his previous employer, and would not be their representative to that company. He gave them his new business card and arranged appointments with some businesses. At one specific business, a donut shop he frequented, the claimant knew the owner and his wife. The wife ran the day-to-day business and spoke English with an accent easily with others.

In early October 2018, the claimant arranged to have an appointment with the donut shop owner. When he arrived, the wife told the claimant that the owner was out running an errand but she proceeded with the appointment. At one point, when she was filling out an on-line application, she called her husband on the telephone, told him the claimant was present, and

that she needed his social security number to complete the form. The owner provided the number. The wife signed the form and the claimant pushed the submit button. The claimant did not look at the signature or provide guidance in signing the form.

On October 3, 2018, the owner contacted the employer to say that his wife, who speaks very little English, signed a contract and she did not know what she was signing. The owner thought the claimant still worked for his old company. The owner was upset because the claimant had encouraged his wife to sign his name on the document. On October 4, 2018, the employer met with the owner. Later on October 4, 2018, the employer terminated the claimant for falsification of a document and purposely misleading a merchant. The claimant was not questioned before he was terminated.

The claimant filed for unemployment insurance benefits with an effective date of October 7, 2018. The employer participated personally at the fact-finding interview on October 26, 2018, by Daena Spraska.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not 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). The employer terminated the claimant for falsification of a document and purposely misleading a merchant. It did not provide as evidence any document the claimant had falsified. Nor did it provide any substantial evidence of a purposely misleading statement the claimant made. Perhaps there was a failure to communicate between the owner and his wife or perhaps the owner did not remember that the claimant told him that he changed jobs. Without proof, there can be no finding of misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he was an eye witness to the events for which he was terminated. The employer provided no documents or statements from eye witnesses to support its case.

DECISION:

The representative's October 29, 2018, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn