

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN J HOCKING
Claimant

AG PARTNERS LLC
Employer

APPEAL 16A-UI-07837-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/19/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 11, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for wanton carelessness. The parties were properly notified of the hearing. A telephone hearing was held on August 5, 2016. The claimant Justin Hocking participated and testified. The employer AG Partners LLC participated through Location Leader Mason Cady. Employer's Exhibits 1 through 4 were received into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an applicator from April 15, 2013, until this employment ended on June 20, 2016, when he was discharged.

On June 14, 2016, claimant received a written warning regarding several issues in his performance related to applications he had done. (Exhibit 1). This warning followed several verbal coachings claimant had received from Cady regarding his performance. The issues addressed in the warning including, but were not limited to, issues regarding improper applications of product, damage done to properties where claimant was applying product, and claimant's failure to report any mistakes or damage. The warning clearly advised that failure to improve would result in termination. On June 17, 2016, the employer received a complaint from a customer that claimant had improperly applied product to his field. (Exhibit 4). A few days prior, the employer received two more complaints regarding improper application of product and damage claimant had done to crops. Claimant had not reported any damage or issues with product application. After reviewing and investigating the complaints and claimant's disciplinary history, the decision was made to terminate his employment effective June 20, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 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.

871 IAC 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 Department of Job Service, 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). 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not

misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant continued to have problems with damaging customer's property, proper application of the product, and reporting any such problems after having been warned. Claimant received numerous verbal coachings about this behavior from Cady and received a final written warning just a week prior to his termination. Despite these warnings, claimant continued to engage in similar behavior. This is disqualifying misconduct.

DECISION:

The July 11, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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