

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ROY L CROOK**  
Claimant

**IMMANUEL**  
Employer

**APPEAL 16A-UI-09135-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/24/16  
Claimant: Respondent (1)**

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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:**

The employer/appellant filed an appeal from the August 17, 2016 (reference 01) unemployment insurance decision that allowed benefits based upon claimant's separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on September 8, 2016. The claimant, Roy L. Crook, participated personally. The employer, Immanuel, participated through Representative Thomas Kuiper and witnesses Phyllis Farrall; Jodi Allan; and Andrea Thome. Employer's Exhibits 1 – 4 were admitted.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as driver from January 4, 2016 until his employment ended on July 22, 2016. Claimant's job duties included transporting participants to various activities. Ms. Thome was claimant's immediate supervisor.

On July 22, 2016 claimant was preparing to drive his van on his route. He noticed that the van was low on oil and reported to Mr. Welch that it would need to have an oil change. Mr. Welch stated not to take it if it was low on oil and that he could take vehicle #1. Claimant responded that he did not have time to flip vehicle #1 over and that the oil levels were not too low to damage anything. Claimant then stated he would take it to the mechanic after his route to get more oil in it until the oil could be changed. Mr. Welch was looking directly at claimant when he made these statements. Mr. Welch did not respond and turned around to continue working on

the computer. Claimant believed that Mr. Welch did not object to his plan of action and took the vehicle on his route that day.

Upon returning from his route Ms. Thome approached claimant and asked him about the conversation he had with Mr. Welch. Claimant told Ms. Thome about their conversation. Ms. Thome discharged claimant for insubordination. At no time during the course of his employment was claimant told that Mr. Welch was his supervisor. Mr. Welch was a co-worker to claimant.

Claimant had received previous verbal discipline and a written warning during the course of his employment. See Exhibit 4. These verbal disciplines and written warning included claimant speaking disrespectfully to co-workers. See Exhibit 4.

Claimant received benefits in the amount of \$432.00 for the one week of July 30, 2016. Employer did participate in the fact finding interview through witness Phyllis Farrall.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

871 IAC 24.32(4) 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.

871 IAC 24.32(8) provides:

(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.

Further, 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). 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." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their

motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant's testimony more credible than the employer's witnesses.

Claimant was not told that Mr. Welch was his supervisor. The two were co-workers. Claimant and Mr. Welch had a conversation about whether or not claimant should take claimant's regular vehicle or another vehicle. They both expressed their opinions about whether it was safe to take the claimant's regular vehicle and Mr. Welch acquiesced to claimant's plan of action when he failed to further disagree with claimant or specifically instruct him not to take the vehicle. Instead he did not say anything and turned around to continue working on his computer.

This type of behavior does not rise to the level of misconduct. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). There is no evidence that the claimant's actions had any wrongful intent. Claimant believed that Mr. Welch had agreed with his course of action in using his regular vehicle on this date. Further, claimant was never instructed that Mr. Welch was more than just a co-worker and that he needed to follow instructions given by Mr. Welch. An employee who was unaware that he or she was violating a rule is not insubordination.

Since there was no current act of misconduct, the employer failed to meet its burden of proof. As such, benefits are allowed. Because benefits are allowed, the issues of overpayment, repayment, and the chargeability of the employer's account are moot.

**DECISION:**

The August 17, 2016 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

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