

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEREMY L BROCKERT
Claimant

THE HON COMPANY
Employer

APPEAL 16A-UI-05843-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/07/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 12, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his discharge from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on June 10, 2016. The claimant, Jeremy L. Brockert, participated personally and through Attorney Andrew W. Bribiesco. The employer, The Hon Company, did not participate.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an expeditor. His job duties consisted of finding appropriate parts and bringing them to the production line. He was employed from May 20, 2013 until April 26, 2016.

On April 21, 2016 claimant lifted a piece of scrap and it fell from his hands injuring his leg. He reported the injury to his employer, per company policy. He treated himself with first aid at the nurse's station and the scrape to his leg healed. On April 26, 2016 claimant was informed that he was being discharged for violation of a work rule in lifting over 40 pounds on April 21, 2016. The employer has a rule in place that if a piece of material is over 40 pounds then an employee must use the vacuum hoist. The piece of scrap that claimant lifted was not over 40 pounds.

Claimant had been previously disciplined in November of 2014 for lifting over 40 pounds when he was trying to flip a table into place. He was injured during the November of 2014 incident and filed a worker's compensation claim. That worker's compensation claim was still active and claimant had not yet recovered from the November of 2014 injury when he was discharged on April 26, 2016.

REASONING AND CONCLUSIONS OF LAW:

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

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

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) 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.

Iowa Admin. Code r. 871-24.32(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.

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). In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case the claimant did not lift a piece of material that was over 40 pounds in violation of the work rule. Claimant appropriately reported his injuries in compliance with the work rule stating that he must do so.

The employer presented no testimony or exhibits that claimant was in violation of any policy or procedure. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser*, and noting that the claimant presented direct, first-hand testimony while the employer presented no evidence, the administrative law judge concludes that it is permissible to infer that the employer's testimony was not provided because it would not have been supportive of its position. See *Id.*

Employer has failed to prove that claimant was discharged for any current act of job-related misconduct that would disqualify him from receiving benefits. Benefits are allowed.

DECISION:

The May 12, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Dawn R. Boucher
Administrative Law Judge

Decision Dated and Mailed

db/pjs