

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ABDIEL PRADO
Claimant

HORMEL FOODS CORPORATION
Employer

APPEAL 18A-UI-08398-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/20/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 30, 2018 (reference 05) unemployment insurance decision that found claimant was not eligible for benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on August 28, 2018. The claimant, Abdiel Prado, participated personally. CTS Language Link provided language interpretation services to the claimant. The employer, Hormel Foods Corporation, was represented by Diana Perry-Lehr and participated through witnesses Elvia Rodriguez and Abigail Larsen.

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 a slicer operator in the employer's pepperoni manufacturing plant. Claimant was employed from November 9, 2017 until July 13, 2018, when he was discharged from employment. Claimant's immediate supervisor was Abigail Larsen. Claimant's normal working hours were 2:30 p.m. to 10:30 p.m. Monday through Friday each week. Claimant was expected to work occasional overtime hours and was advised of this prior to his hire and during orientation.

This employer has a written policy wherein direct refusal to perform work assigned by the supervisor or refusing to obey a direct order which includes refusing the hours as directed by the supervisor, including overtime, will result in discharge upon the first offense. Claimant was aware of the policy and received a copy of the policy. Supervisors have the right to assign overtime for employees on an as needed basis. Use of overtime is necessary for the proper functioning of the manufacturing plant and to meet production deadlines. Employees with less seniority, who have completed their regular job duties, are assigned first to overtime shifts.

On July 12, 2018, at approximately 9:45 p.m., Ms. Larsen instructed claimant that he needed to work overtime that night because there were not enough volunteers for the additional work that needed completed. Claimant was upset because there was another employee working that had less seniority than claimant did. Claimant discussed this with Ms. Larsen and she told the claimant that he was the one being selected for overtime. This was because the other employee with less seniority was working on their regular job that extended past the 10:30 p.m. shift end time. When asked if he understood that the overtime was mandatory, claimant nodded his head "yes". Claimant then left when his regular shift ended, without working overtime.

Claimant alleged that he was being harassed by being chosen for overtime based upon his nationality. There was no credible evidence presented in this case that claimant was being harassed. Claimant did not speak to any other supervisor or management personnel regarding his disagreement with Ms. Larsen prior to his discharge. The employer discharged the claimant pursuant to its written policy that refusing to perform work as assigned by the supervisor would subject an employee to discharge upon the first offense.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

As a preliminary matter, I find that the 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).

The employer has the burden of proof in establishing disqualifying job misconduct. Iowa Code § 96.6(2); *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). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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).

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). 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 that Ms. Larsen's testimony is more credible than claimant's testimony.

Insubordination can manifest in several different ways. An employer has the right to expect an employee to follow reasonable directions. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Id.* Misconduct can be found when a claimant was discharged for refusing to complete job tasks after his shift because he created the extra job tasks by working too slow. *Boyd v. Iowa Dept. of Job Serv.*, 377 N.W.2d 1 (Iowa Ct. App. 1985). Continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The refusal of a prison guard to answer questions on his private drug use constitutes job misconduct since the prison's rule requiring him to disclose this information was necessary to the functioning of the prison system. *Ross v. Iowa State Penitentiary*, 376 N.W.2d 642 (Iowa App. 1985). However, if the request was unreasonable or the claimant had a good faith belief or good cause to refuse the request, no misconduct would be found. *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa Ct.App.1982)(an employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause).

An instruction is reasonable if it presents no hardship to the employee and no threat to his or her health, safety, or morals. See *Endicott v. Iowa Dep't of Job Services*, 367 N.W.2d 300, 304 (Iowa App. 1985)(finding misconduct based on employee's unreasonable refusal to work overtime after employer's short-notice request). In this case, clearly the instruction was

reasonable given the fact that it presented no hardship to the claimant and no threat to his health, safety or morals. Further, he had been on notice since he first began his employment that he may be instructed to work overtime hours.

It is also clear that the claimant had no good faith belief or good cause to refuse the request. In *Woods*, the claimant was being subjected to racial harassment. There was no credible evidence presented in this case that claimant was being harassed. Further, this was clearly not a good faith error in judgment. Good faith errors in judgment mean a mistaken action taken with the intent to fulfill the employer's purpose. *Henry*, 391 N.W.2d at 737 (Iowa App. 1986)(reversing denial of benefits because employee in good faith attempted to follow employer's conflicting rules but had misinterpreted their meaning). That was not the case here. There was no mistake, misunderstanding or misinterpretation involved when claimant intentionally refused to work overtime when his supervisor instructed him to do so. Ms. Larsen explained to claimant that he was the person with the least seniority who had completed his regular job duties and he still refused to work overtime. Claimant was also fully aware that his job duties and obligations included working overtime hours as instructed by his supervisor. He was aware that violation of this employer policy could lead to discharge.

Claimant deliberately failed to follow his supervisor's instructions to work overtime on July 12, 2018, in violation of the employer's written policy and deliberately disregarding the employer's interests. This is clearly a deliberate act that constituted a material breach of his duties and obligations that arose out of his contract of employment. Accordingly, the employer has proven claimant committed job-related misconduct. As such, benefits are denied.

DECISION:

The July 30, 2018 (reference 05) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his separation date, and provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs