

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MATTHEW D BUCKLEY**  
Claimant

**APPEAL 21A-UI-15903-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRIGHT AND CLEAR SOLUTIONS INC**  
Employer

**OC: 04/11/21  
Claimant: Appellant (2)**

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Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit

**STATEMENT OF THE CASE:**

On July 17, 2021, the claimant/appellant filed an appeal from the July 9, 2021, (reference 02) unemployment insurance decision that disallowed benefits based on claimant being discharged for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on October 5, 2021. Claimant participated at the hearing. Employer participated through President, Robin Leonard. Exhibits 1, 2, B, C, and D were admitted into the record.

**ISSUE:**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 23, 2016. Claimant separated from the employer and returned to work for the employer on March 22, 2017. Claimant last worked as a full-time general manager for the employer's high rise window cleaning business. Claimant was separated from employment on April 14, 2021.

On April 13, 2021, the employer received a complaint that claimant had been drinking while he was working. The employer asked claimant if he drank on the job. The claimant denied the allegations. (Exhibit 1, pg. 1). The employer conducted an investigation that involved her talking with other company employees to see if they had seen claimant drink on the job. The other employees confirmed they witnessed claimant drink on the job and told the employer they did not report it to her because they thought she already knew about it. The employees reported that claimant had been drinking on the job for years. After the employer finished her investigation she decided to terminate the claimant for violation of their alcohol policy.

The employer has an alcohol use policy that states:

“Bright and Clear Solutions, Inc. maintains a drug and alcohol free environment. Any employee who is determined to be manufacturing, using, processing, selling, providing or assisting in the sale or provision of alcohol or illegal drugs on company property, company vehicles, or any job site, will be disciplined up to and including termination. It is not appropriate for any employee to consume alcohol prior to, immediately reporting to work, during break time, between jobs, or on the job site. Employees may not report to work or conduct work under the influence of alcohol or illegal drugs.

Substance abuse is the misuse or illegal use of any material or controlled substance including alcohol, and prescription drugs, which alter the mood, perception, and consciousness or impairs ones performance.”

The claimant acknowledges that he knew about the policy. On April 14, 2021, the employer called a company meeting and informed claimant during the meeting that he was being put on a “hard time out.” Claimant became upset and left the meeting. Another employee followed claimant out and obtained his keys, the company card, and the company phone. Claimant asked to keep the phone and the employer allowed him to keep it. The next day claimant asked Ms. Leonard what a “timeout” meant. (Exhibit 1, pg. 3). Ms. Leonard responded she wanted him to get help. (Exhibit 1, pg. 3).

Claimant testified that he thought he was laid off due to COVID. The employer did not reduce their workforce during COVID.

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

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

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 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:

- 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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp’t Appeal Bd.*, 500 N.W.2d 64, 66

(Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). 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).

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.

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 cannot be based on such past act or acts. The termination of employment must be based on a current act.

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. 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 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).

Employer testified that another employee reported claimant's alcohol use. The employer and the witness statements testify generally regarding claimant's alcohol use during the job. The employer did not provide the date of a specific incident to establish a current act which is required under the law. Therefore, it is unknown whether the incident reported by the co-worker was a current act. Employer has not met its burden of proving that claimant was discharged for a current act of disqualifying, job-related misconduct. The employer may have been justified for terminating claimant, but claimant is not disqualified from unemployment benefits under Iowa law. Therefore, claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

#### **DECISION:**

The July 9, 2021, (reference 02) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.



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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

October 08, 2021  
Decision Dated and Mailed

cs/ol

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.