

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANE C CLEMENTS
Claimant

CONSUMER SAFETY TECHNOLOGY LLC
Employer

APPEAL 21A-UI-15831-DH-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/25/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The Claimant filed an appeal from the July 15, 2021, (reference 02) unemployment insurance decision that denied benefits based upon being discharged from work on May 3, 2021 for violation of a known company rule regarding social media and company values. The parties were properly notified of the hearing. A telephone hearing was held on August 23, 2021 at 1:00 p.m. The claimant, Mr. Clements, participated. The employer did not participate. Official notice was taken of the administrative record, specifically of the fact-finding documents.

ISSUE:

Was claimant discharged for job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed at Consumer Safety Technology LLC from early October, 2018 until his last work day, on or about April 28, 2021. His position at the time of separation was a full-time advanced service representative. Anna Burham was his immediate supervisor. He was full time with a varied schedule. He was separated from his employment on May 3, 2021, when he was terminated for violation of social media policy and violation of company values.

Claimant's discharge seems to be related to a January 29, 2021 YouTube video contained. It is not clear how this video is tied to claimant. It is not asserted claimant posted the video, appeared in the video, spoke in the video, made the video or otherwise how claimant is connected to the video.

Claimant testified Human Resources contacted him around April 16 to 19, 2021 to ask what if anything he knew about a YouTube video that was disparaging to the employer. Claimant denied any knowledge of or involvement in the video. Employer told him the matter was under investigation. Claimant continued to work.

Claimant testified that, prior to the May 3, 2021 termination, he did not receive any form of discipline, whether verbal or written; was not aware his job was in jeopardy; had not received any policy regarding social media nor company values; and does not recall receiving an employee handbook or policy book in general from the time of hire to termination.

REASONING AND CONCLUSIONS OF LAW:

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

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). 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).

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.

Claimant denies any knowledge of the video in question. Employer has the burden and has failed to show claimant engaged in in disqualifying misconduct. Even if claimant did engage in the conduct, as alleged, the conduct for which claimant was discharged was merely an isolated incident of poor judgment. At best, this would be carelessness, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided claimant is otherwise eligible. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

DECISION:

The July 15, 2021, (reference 02) 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.



Darrin T. Hamilton
Administrative Law Judge

September 1, 2021
Decision Dated and Mailed

dh/mh