

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PETER J SCHUELLER
Claimant

APPEAL 21A-UI-16360-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINTZLE CONSTRUCTION INC
Employer

OC: 05/10/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 20, 2021, (reference 03) unemployment insurance decision that denied benefits based upon a finding that claimant was discharged for failing to follow instructions. The parties were properly notified of the hearing. A telephone hearing was held on September 16, 2021, and was consolidated with the hearing for appeal 21A-UI-16361-S2-T. Claimant Peter J. Schueller participated and was represented by attorney Tom Bright. Employer Kintzle Construction, Inc. participated through owner Jeff Kintzle and witness Charlie Vesbach and was represented by attorney Flint Drake. Employer's Exhibits 1 – 3 were admitted. The administrative law judge took official notice of the administrative record.

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 laborer from March 22, 2017, until April 27, 2021, when he was discharged.

On April 20 and 21, 2021, claimant was working with three other laborers to apply manure at a farm. The employees received a map of the areas to apply manure. The fields required a liquid manure which does not stick to hills as well as solid manure. Even though claimant had not slept in almost two days, he told his partner Mr. Vesbach to take his turn sleeping, and that he and Kevin Kintzle would work. Claimant knew how to lay out the next fields, and the others did not, and he did not want to slow down their work, so he continued working rather than going to sleep.

On April 21, 2021, the owner of the farm learned from a neighbor that manure had run into her yard. The manure came from a field where it had been pumped the previous evening. It was applied in an area where it was not supposed to be applied, causing it to run off the field downhill. This led Mr. Kintzle to believe the manure had been overapplied, because the correct

amount should not have run off. The farm is required to abide by a strict manure management plan, and go through an audit each year to show that it is applying gallons correctly per the manure plan. If the manure goes into the nearby lake and creeks, the farm and employer could be subjected to fines due to regulations.

The tractor driven by claimant contained a monitor showing the number of gallons per acre being applied. This ensures employees are applying the correct amount at all times. For this particular project, the rate was 18,000 gallons per acre. Employer estimated significantly more than this was used for the field based on the amount of runoff.

On April 27, 2021, employer discharged claimant for overapplying the manure and causing it to runoff into neighboring yard and ditches.

Claimant received no disciplinary action during his employment for failing to follow instructions.

Claimant filed his initial claim for benefits effective May 9, 2020. He filed for benefits but employer protested his claim and two decisions were issued determining claimant was not eligible for benefits due to not being able to and available for work.

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.

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. *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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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.* The findings of fact show how the disputed factual issues were resolved.

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.

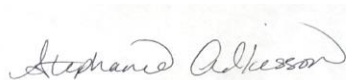
The conduct for which claimant was discharged was merely an isolated incident of poor judgment. "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability. Here, claimant was careless, 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). Ordinary negligence is all that is proven here.

Employer contends claimant intentionally caused the over application of manure to seek revenge against employer for protesting his prior unemployment insurance benefits claim. However, it seems incredible that an employee would risk losing his job in order to do so, given that such an action would place him back in the position of seeking unemployment insurance benefits again. Additionally, employer allowed claimant to continue working for an additional week before discharging him for the incident, despite Mr. Kintzle being made aware of the extent of the extent of the damage by the April 21, 2021. Further supporting claimant's version of events is the fact that he assisted in cleaning up a mess when a hose leaked manure the same day. This does not align with employer's position that claimant wanted to cause substantial damage to employer. While claimant's failure to follow instructions was careless, it is not misconduct. Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The July 20, 2021, (reference 03) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



Stephanie Adkisson
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September 22, 2021
Decision Dated and Mailed

sa/mh