

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LUIS E LOPEZ
Claimant

CRYSTAL DISTRIBUTION SERVICES INC
Employer

APPEAL 17O-UI-08009-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/02/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 24, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 24, 2017. Claimant participated personally and through Spanish Interpreter 11215 with CTS Language Link. Employer participated through human resource manager Carol Schwickerath and meat room operations manager, Dave Vanderpool. Employer's Exhibits 1 and 2 were received.

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 began working for employer in July 2015. Claimant last worked as a full-time production worker. Claimant was separated from employment on March 30, 2017, when he was terminated.

Claimant is Hispanic. In September 2016, claimant wrote employer a letter complaining of alleged discrimination. Employer issued claimant a verbal warning around the same time regarding following directions.

On Monday, March 27, 2017, claimant's manager, Mark Thurm, assigned him to clean up garbage. After claimant finished cleaning up all of the garbage, he began another assignment. Unbeknownst to claimant and Thurm, another worker put more garbage on the floor after claimant was finished cleaning. Thurm approached claimant accusing him of failing to complete the job. Claimant denied the allegations. Thurm told claimant to put the "shit" away. Claimant became upset and an argument ensued. Eventually, claimant and Thurm went to the human resource office and after meeting with human resource manager, Carol Schwickerath claimant was sent home for the day.

Claimant worked on Tuesday, March 28, 2017. Claimant met with president, Tom Poe. Poe tried to give claimant a document that was written in English. Claimant has limited English

language skills. Claimant expressed that he thought Poe was addressing what happened the day before with Thurm and that claimant was going to have his wife help him write a letter so he could clearly express his side of the story in English.

Claimant worked on Wednesday, March 29, 2017. At the end of the day, human resource manager, Schwickerath received claimant's letter. The letter explained claimant's version of events and stated that he felt he was treated more harshly than other employees. Claimant noted this was the second letter he had written, and if the problem continued he would find help outside the company.

Claimant was terminated by president Poe at 8:30 a.m. the next morning, March 30, 2017.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). 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). 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).

In this case, claimant was terminated for complaining about the way he was treated by Thurm and expressing that if it happened again he would seek help outside of the company. Employer asserts it terminated claimant for his conduct on Monday, March 27, 2017, but I do not find that assertion credible.

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.*

Claimant engaged in the conduct on Monday, March 27, 2017, but employer allowed claimant to work the following three days. Employer's president was aware of the situation and even met with claimant on Tuesday. Claimant submitted a letter complaining about the way he was treated and threatening to take action outside of the company on the end of the day Thursday and he was terminated the next morning, Friday, at 8:30 a.m. Employer claims it investigated claimant's allegations and determined they were unfounded between 6:30 a.m. and 8:30 a.m. on Friday morning. I do not find it credible that a thorough investigation could have been or was conducted in that time frame. Employer also alleges that it waited until Friday morning to terminate claimant because vice president, Don Johnston was away and employer was waiting for him to review the situation. I also do not find this credible as president Poe was the person who terminated claimant—not Johnston—and Poe had been aware of the situation all along.

Whether employer actually discriminated against claimant is not an issue in this appeal. What is clear is that claimant genuinely believed he was being mistreated on the basis of his ethnicity. Claimant's complaint of mistreatment and statement that next time he would take his complaint

outside of the company is not misconduct. Employer failed to establish claimant was terminated for job-related misconduct, and benefits are allowed.

DECISION:

The April 24, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn