

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES RIFE
Claimant

FARMERS INC EXCH FARMER
Employer

APPEAL 22A-UI-04184-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/26/21
Claimant: Appellant (01)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 4, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on March 17, 2022. Claimant, Charles Rife, participated personally. The employer, Farmers Inc Exch Farmer, participated through hearing representative Dennis Mullens, and witnesses Katie Holly and Vicki D-ernville. The claimant's Exhibit 1, a letter dated January 3, 2022, was offered and admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
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 virtual sales consultant. He was employed from May 14, 2018 until December 8, 2021. Claimant's immediate supervisor Vicki D-ernville. Claimant testified that he was discharged from employment because he did not provide a doctor's note to return to work. On claimant's daughter was sick and claimant became sick. Claimant was sent a letter from the employer dated December 7, 2021 that he needed to provide a doctor's note when he returned to work. Claimant did not go to the doctor during his time off of work and did not have a doctor's note to provide when he was ready to return to work.

The employer has a policy that if the employer is out for 7 or more days, they are placed on a leave of absence and need to provide a doctor's note to return. Claimant was aware of this policy and acknowledged his receipt of the policy with his signature. Ms. Holly testified that Claimant did not provide the return to work note from his doctor. Ms. Holly further testified that in a phone call with the employer on December 23, 2021, claimant said he would not be returning to work and would not be providing a note from his doctor.

Ms. D-enrville testified that on December 15, she notified the claimant that because of the amount of time he had been out of work, he needed to perform a doctor's note to return to work. Continuing work was available for the claimant had he provided the doctor's note to return to work. However, due to the claimant's failure to comply with the return to work policy of providing a doctor's note, he was terminated from employment.

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).

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

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.* 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 the employer's testimony is more credible than the claimant's testimony.

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 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). Further, 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 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). A lapse of 11 days from final act until discharge when claimant was notified on fourth day that his conduct was grounds for dismissal did not make final act a "past act". *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

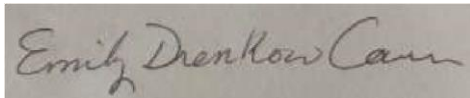
This was not an incident of carelessness or poor work performance. Claimant was made aware of the policy that he was required to provide a doctor's note to return to work. He was reminded of that policy in a phone call with his employer and in a letter sent from the employer to the claimant. Because claimant did not provide a doctor's note, he was unable to return to work.

The claimant chose not to see a doctor and not to submit a doctor's note. The claimant's actions were intentional and they were a substantial violation of the client's policies and procedures.

The employer has a right to expect that an employee will not jeopardize the liability of the employer by intentionally violating policies that are in place. There is substantial evidence in the record to support the conclusion that claimant deliberately violated these rightful expectations in this case. Accordingly, the employer has met its burden of proof in establishing that the claimant's conduct consisted of deliberate acts that constituted an intentional and substantial disregard of the employer's interests. These actions rise to the level of willful misconduct. As such, benefits are denied.

DECISION:

The February 4, 2022, (reference 01) unemployment insurance decision denying benefits is affirmed. Claimant was discharged from employment for failure to comply with the employer's policy of providing a doctor's note to return to work. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.



Emily Drenkow Carr
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March 31, 2022
Decision Dated and Mailed

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