

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRISTOPHER T BULTEN
Claimant

CENTRO INC
Employer

APPEAL 21A-UI-18542-DZ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 07/04/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Cristopher T Bulten, the claimant/appellant, filed an appeal from the August 17, 2021, (reference 01) unemployment insurance (UI) decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 14, 2021. Mr. Bulten participated and testified. The employer participated through Tanner Glaser, human resources generalist.

ISSUE:

Was Mr. Bulten discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bulten began working for the employer on December 3, 2020. He worked third shift as a full-time material handler. His employment ended on May 5, 2021.

On May 4, Mr. Bulten was sitting in a forklift with his foot on the brake. Mr. Bulten was reviewing work documents. He heard a horn honking but ignored it because people honked the horns all the time. The second shift supervisor pulled up next to Mr. Bulten and told him that he had been trying to get his attention. The supervisor asked Mr. Bulten if he need a break because he looked tired. Mr. Bulten had not yet had a break that day so he said yes and took a break. Mr. Bulten returned to work, but he became dizzy. Mr. Bulten asked the second shift supervisor if he could go home for a bit and the supervisor said yes. Mr. Bulten went and returned to work. The second shift supervisor was no longer at work at that time. Mr. Bulten went back to work driving the forklift. Mr. Bulten's supervisor, the third shift supervisor, told Mr. Bulten that he could not drive the forklift and that he had to work on the line. Mr. Bulten told his supervisor that he could not work the line because his leg hurt. The supervisor sent Mr. Bulten home.

On May 5, the employer terminated Mr. Bulten employment for sleeping on the job on May 5. The employer's policy provides that sleeping on the job may result in discipline up to, and

including, termination of employment. Mr. Bulten had previously been written up on February 18 for hitting some boxes and damaging the mirror on a forklift. That same month, Mr. Bulten was suspended for two-days while the employer investigated an incident in which he was driving a different forklift than his usual one and he hit a pipe. The employer's investigation concluded that the incident was an accident.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Bulten 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 Dept 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 Dept 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).

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 administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used his own common sense and experience.

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.

In this case, the employer has failed to establish misconduct. Mr. Bulten credibly testified that he was not sleeping on the job on May 4. The employer’s representative could provide only general information about the incident, while Mr. Bulten testified about his personal experience. While Mr. Bulten ignoring the supervisor’s honking may have been an incident of poor judgment, it was not misconduct. Since the employer has not established misconduct, benefits are allowed.

DECISION:

The August 17, 2021, (reference 01) unemployment insurance decision is reversed. Mr. Bulten 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.



Daniel Zeno
Administrative Law Judge

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October 20, 2021
Decision Dated and Mailed

dz/ol