

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS WILLE
Claimant

BEST COB ACQUISITION COMPANY LLC
Employer

APPEAL 20A-UI-09433-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: APPELLANT (1)

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

STATEMENT OF THE CASE:

On August 8, 2020, the claimant filed an appeal from the August 3, 2020, (reference 01) unemployment insurance decision that denied benefits based on misconduct on the job. The parties were properly notified about the hearing. A telephone hearing was held on September 17, 2020. Claimant participated. Employer participated through Sandroock, Logistics Manager.

ISSUE:

Did claimant commit 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 on January 1, 2009. Claimant last worked as a full-time over the road truck driver. Claimant was separated from employment on May 7, 2020, when he was told in a Zoom meeting he was discharged for violation of company policy. Claimant was discharged due to an incident at a customer's plant that claimant was making a delivery. Claimant made a delivery on Friday May 1, 2020 in Maryland. On Saturday May 2, 2020 another driver from Best Cob Acquisition Company, LLC (Best Cob) made a delivery to the same customer in Maryland. The claimant and the other driver Ed (no last name given) had a history of not working well together.

Claimant testified that Ed threatened him and was shouting profanities at him. Ed called Mr. Sandroock concerning this confrontation. Claimant said that he received a call from Mr. Sandroock and was told by Mr. Sandroock to leave the location and not to have any contact with Ed. Claimant testified he left at that time.

Mr. Sandroock testified that he received a call from Ed on May 2, 2020. Mr. Sandroock testified he heard claimant screaming at Ed. Mr. Sandroock told claimant to disengage and leave the location. Mr. Sandroock testified he was called by Ed again and claimant was confronting and screaming again at Ed. Mr. Sandroock testified he heard the claimant yell at Ed the second time. Mr. Sandroock testified that the plant manager at the Maryland plant complained of the conduct of the claimant.

Claimant was given a written warning on February 15, 2019 for his rude and disrespectful conduct toward co-employees. Claimant received a written warning for his conduct in using profanity and being disrespectful on June 1, 2017. Mr. Sandrock has provided the company policy on conduct to claimant and has provided training on the standards of conduct expected of employees. While much of Mr. Sandrock's testimony was based upon hearsay, Mr. Sandrock did have first-hand knowledge of claimant's conduct on May 2, 2020 as he heard the claimant in his two calls with claimant.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 disqualification shall continue 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 job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 is not 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).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions “liberally to carry out its humane and beneficial purpose.” *Bridgestone/Firestone, Inc. v. Emp’t Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). “[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant.” *Diggs v. Emp’t Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

I found the testimony of Mr. Sandrock more credible than Mr. Wille. Mr. Wille minimized his prior warnings and past breaches of company policy. I find that the claimant was aware of company policy on behavior concerning customers and co-workers. The claimant had received prior written warnings and verbal warnings. Claimant was provided training. The conduct of the claimant on May 2, 2020 in yelling at a co-worker, that was overheard by a customer violated the employer’s policy. I find that claimant’s violation was substantial. I find claimant committed job related misconduct.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The August 3, 2020, (reference 01) unemployment insurance decision is affirmed. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided claimant is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though claimant is not eligible for regular unemployment insurance benefits under state law, claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. This decision does not address when claimant is eligible for PUA. For a decision on such eligibility, claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>
<https://www.iowaworkforcedevelopment.gov/Pua-application>



James F. Elliott
Administrative Law Judge

September 22, 2020
Decision Dated and Mailed

je/scn