

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZANE G MANGLER

Claimant

APPEAL 22A-UI-00361-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 10/03/21

Claimant: Respondent (1)

Iowa Code §96.5(2)a-Discharge/Misconduct

Iowa Code §96.5(1)- Voluntary Quit

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On November 24, 2021, the employer/appellant filed an appeal from the November 16, 2021, (reference 01) unemployment insurance decision that allowed benefits based on claimant being dismissed on July 3, 2021 but there was no evidence of willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on January 24, 2022. Claimant participated at the hearing. Employer participated through Christine Bates. Administrative notice was taken of claimant's unemployment insurance benefits.

ISSUES:

Was the separation a discharge for job-related misconduct that disqualifies claimant from benefits?

Should claimant repay benefits?

Should the employer be charged due to employer participation in fact finding?

Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 9, 2021. Claimant last worked part-time as kitchen staff. Claimant was separated from employment on July 9, 2021, when he was discharged for violating the employer's policies.

On July 3, 2021, employer received a customer complaint that reported on July 2, 2021, claimant was standing in the front of the store smoking marijuana. The customer reported that they entered the store and then claimant went back into the store and was rude to the customer.

The claimant denies smoking marijuana during his break. The employer did not require claimant to submit to a drug test. Claimant was on supervised release through the court system and was

required to submit to random drug testing. Claimant submitted to a drug test on July 9, 2021, and did not test positive for drugs. Claimant also denies being rude to the customer because the kitchen was closed when the customer would have been in the store.

The employer discharged claimant on July 9, 2021, for violating company policies 38.640, 38.010, and 34.500. Policy 38.640 is the employer's alcohol and drug policy. Policy 38.010 states: "it is imperative that all employees take responsibility for contributing to a safe work environment by following all safety procedures and not engaging in activities that jeopardize the health and safety of others. Policy 34.500 states: "an employee's behavior will be appropriate to the work situation, that all employees are expected to conduct themselves and behave in a manner which leads to the efficient operation of the company." Claimant was aware of the employer's policies. Claimant had no verbal or written warnings prior to his discharge.

Claimant filed for benefits with an effective date of October 3, 2021. Claimant's weekly benefit amount is \$143.00. Claimant began receiving benefits on week ending October 9, 2021. Claimant has received \$715.00 in unemployment benefits.

The employer participated in fact-finding by submitting documentation and through a written statement.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

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.

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). 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. 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). 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.

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 claimant's testimony more credible than employer's.

In this case the employer received a complaint the claimant was smoking marijuana in front of the store. Ms. Bates was not present the night the customer purported to see claimant smoking marijuana. The employer accepted the customer's complaint as fact. The employer had the ability to drug test the claimant to confirm claimant was smoking marijuana but chose not to. The claimant denies he was smoking marijuana and passed a drug test the following week. The employer has failed to prove that claimant was discharged for any current act of job-related

misconduct that would disqualify him from receiving benefits. Benefits are allowed. The employer's account shall be charged.

The issues of whether claimant was overpaid benefits and whether claimant shall repay benefits is moot since claimant is entitled to benefits.

DECISION:

The November 16, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant 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.

The issues of whether claimant was overpaid benefits and whether claimant shall repay benefits is moot since claimant is entitled to benefits.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

February 14, 2022
Decision Dated and Mailed

cs/scn

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.