

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TYLER VAN WEELDEN
Claimant

MALCOM LUMBER & HARDWARE INC
Employer

**APPEAL 20A-UI-08128-HP-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/10/20
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant Tyler Van Weelden filed an appeal from a June 30, 2020 (reference 01) unemployment insurance decision that denied benefits based upon his discharge from employment. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for August 24, 2020. Van Weelden appeared and testified. No one appeared on behalf of Malcom Lumber & Hardware Inc. ("Malcom Lumber"). I took administrative notice of the claimant's unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUES:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

Van Weelden commenced full-time employment as a delivery driver with Malcom Lumber in July 2012. Two years later Malcom Lumber promoted Van Weelden to sales. Shane Van Dee was his immediate supervisor.

On March 16, 2020, Van Weelden asked Van Dee if he could take a leave of absence from work due to safety concerns related to Covid-19. Van Weelden worked with hundreds of people per day and Malcom Lumber did not provide him with personal protective equipment. Van Weelden had three weeks of vacation and sick leave. Van Weelden told Van Dee his leave might last more than three weeks, and Van Dee told him that was fine. Van Weelden had been diagnosed with high blood pressure, but his physician did not restrict him from working.

Van Weelden received a letter from Kevin Raasch, COO of Malcom Lumber, dated April 10, 2020, placing Van Weelden on an approved leave of absence through April 30, 2020. After receiving the letter, Van Weelden had regular contact with Van Dee through text message. Van Weelden had been unable to contact Van Dee by telephone, so on April 27, 2020, Van Weelden went into the store and he spoke with Van Dee. Van Weelden asked if he could come back on April 28,

2020. Van Dee stated he was not sure about that and the two agreed Van Weelden would return to work on May 1, 2020.

On April 30, 2020, at 8:10 p.m., Raasch discharged Van Weelden through a text message. The message provided, "your employment with Malcom Lumber has been terminated. You will receive a certified letter with an explanation." Van Weelden responded, asking why he had been terminated when he had planned to return to work on May 1, 2020. Van Weelden did not receive a response from Raasch. Van Weelden testified no one had warned him that his job was in jeopardy before Raasch terminated his employment.

After his termination, Van Weelden received a certified letter from Raasch. The letter stated Van Weelden had not contacted anyone to discuss when he was coming back and that his employment had been terminated due to job abandonment.

REASONING AND CONCLUSIONS OF LAW:

Under Iowa Code section 96.5(2)a,

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.

871 Iowa Administrative Code 24.31(1)a, defines the term "misconduct" 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 Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

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.

And 871 Iowa Administrative Code 24.32(8) provides:

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.

Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Id.* at 11. The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (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, 808 (Iowa Ct. App. 1984) The definition of misconduct in the administrative rule focuses 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.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986) Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (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, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988) Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986)

871 Iowa Administrative Code 24.32(7), provides, "[e]xcessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." The Supreme Court has held 871 Iowa Administrative Code 24.32(7) accurately states the law. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984)

Excessive absences are not considered misconduct unless unexcused. *Cosper*, 321 N.W.2d at 10. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to and including discharge for the absence under its attendance policy. *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554, 558 (Iowa Ct. App. 2007).

The determination of whether unexcused absenteeism is excessive requires consideration of past acts and warnings. *Higgins*, 350 N.W.2d at 192. The absences must also be unexcused. *Cosper*, 321 N.W.2d at 10. An absence can be unexcused if it did not constitute reasonable grounds or if it was not properly reported. *Id.*; *Higgins*, 350 N.W.2d at 191. Excused absences are those with “appropriate notice.” *Cosper*, 321 N.W.2d at 10. Absences in good faith, for good cause, and with appropriate notice are not misconduct. *Id.* Such absences may be grounds for discharge, but not for disqualification of benefits because substantial disregard for the employer’s interest has not been shown and this is essential for a finding of misconduct. *Id.*

Van Weelden testified Raasch approved his request for a leave of absence through April 30, 2020. On April 27, 2020, Van Weelden went to Malcom Lumber. He spoke with Van Dee and requested to return to work the next day. Van Dee responded he did not know if Van Weelden could return the next day and they both agreed Van Weelden could return to work on May 1, 2020. Raasch terminated Van Weelden’s employment on April 30, 2020. No one appeared on behalf of Malcom Lumber to rebut Van Weelden’s testimony. I find Malcom Lumber has failed to prove Van Weelden was discharged for any current act of job-related misconduct that would disqualify him from receiving unemployment benefits. Benefits are allowed.

DECISION:

The June 30, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed. The employer has not established the claimant was discharged for a disqualifying reason. Benefits are allowed provided the claimant is otherwise eligible.



Heather L. Palmer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

August 27, 2020
Decision Dated and Mailed

hlp/sam