

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ERIC J WEAVER
Claimant

NEXT GENERATION WIRELESS INC
Employer

APPEAL 15A-UI-04448-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/29/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 9, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on May 11, 2015. The claimant participated. The employer participated through Amy Larsen. Derek Lindstrom also testified for the employer. Employer exhibit one was admitted.

ISSUE:

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: The claimant was employed full-time as a sales manager and was separated from employment on March 25, 2015, when he was discharged for failure to fulfill his performance improvement plan.

The claimant was placed on a 60-day performance improvement plan (PIP) on January 24, 2015 (Employer Exhibit One). The plan laid out ten objectives for the claimant to accomplish and was signed by the claimant (Employer Exhibit One, page seven). The PIP warned the claimant “immediate and sustained improvement must be seen in this 60-day timeframe and going forward... Should you fail to meet these expectations and agreed upon action items; additional disciplinary action may be taken up to and including separation from NGW.”

Over the course of the next two months, the claimant met almost weekly to address the status of the store and progress of the objectives contained within the PIP, which included visiting other stores, observing employees, reading an article on leadership and responding, amongst other things. Most of the objectives had concrete principles that could be measured. The one objective both the claimant and employer agreed was not met was with respect to the claimant’s meeting with employee, Colton, to develop his leadership skills. The claimant made attempts to coach the employee who he believed was not coachable and updated the employer weekly of

his progress and concerns about Colton during the course of the PIP. The employer testified the claimant did not try or meet the objective related to Colton. The claimant otherwise made strides and improvement in the other objectives outlined, although complete compliance was never achieved.

At the end of the PIP's 60-day period, the claimant was discharged for failure to meet the expectations outlined. In his testimony, Mr. Lindstrom stated that successfully completing the PIP would be compliance with every single each guideline and then later testified the claimant had shown improvement, but not "sustained improvement." The claimant argued that he had made sustained improvements based on the expectations outlined, and one hundred percent compliance was not required.

The claimant had been employed since 2011 and previously correctly completed performance improvement plans under prior managers.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

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).

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 is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

In this case, the claimant was discharged for failing to comply with the ten objectives outlined in his performance improvement plan (PIP). The employer offered multiple definitions as to what successfully completing the PIP would entail. The plan itself referenced "immediate and sustained improvement." The administrative law judge concludes that based on the evidence presented, the claimant accomplished several of the objectives and made progress in all others. The only objective the claimant failed to make real improvement upon was with regard to coaching Colton. To hinge the claimant's discharge on the success of another employee, for which he could not control is unreasonable in light of the circumstances. The claimant tried to meet with Colton and coached him to the best of his ability. When he hit challenges, he updated the employer during weekly meetings, but the employer failed to establish the claimant's incompleteness of this objective or any part of his PIP was intentional or deliberate or with "wrongful intent". 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). While the employer may have had a good business reason for discharging the claimant, it has not met its burden to show disqualifying misconduct.

Nothing in this decision should be interpreted as a condemnation of the employer's right to discharge the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

DECISION:

The April 9, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs