

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN E HAYES
Claimant

AML RIVERSIDE LLC
Employer

APPEAL 18A-UI-04135-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/04/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 29, 2018 (reference 01) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on May 1, 2018. The claimant, Justin E. Hayes, participated personally. The employer, AML Riverside LLC, participated through representative Patty Cranston as well as witnesses Kellie Moen and Michael Landwehr. Employer's Exhibits 1 – 8 were 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: Claimant was employed full-time as a production operator in the employer's manufacturing plant. The employer is required to follow specific United States Food and Drug Administration ("FDA") guidelines. Claimant was employed from August 1, 2016 until March 7, 2018, when he was discharged from employment. Claimant's job duties included operating machinery in production rooms for the employer.

This employer has a written disciplinary policy in place that states a violation of the safety guidelines can lead to several different possible disciplinary steps. See Exhibit 3. Claimant received a copy of the written policy. See Exhibit 3.

Claimant received an employee counseling statement on November 29, 2017 for wearing a necklace on the production floor, which was in violation of the employer's dress code. See Exhibit 2. The counseling statement warned that further unsatisfactory conduct might lead to further disciplinary action, up to and including termination. See Exhibit 2. On August 24, 2017, claimant received an employee counseling statement for wearing a necklace on the production floor, which was in violation of the employer's dress code. See Exhibit 2. Claimant had been given a verbal warning for wearing a necklace on the production floor on August 16, 2017. See Exhibit 2.

The employer has a written standard operating procedure that requires employees to wear beard covers if there is more than 1/16 inch of facial hair growth. See Exhibit 8. On March 7, 2018, claimant had more than 1/16 inch of facial hair growth, requiring him to wear a beard cover in the production areas. On March 7, 2018, Michael Landwehr witnessed claimant not wearing his beard cover in the production area. Mr. Landwehr motioned for claimant to put on his beard cover appropriately and reported the incident to management.

Later in the day on March 7, 2018, Michael Spangler witnessed claimant was not wearing his beard cover while in the production room airlock. See Exhibit 1. The dress code signage outside of the production room airlock specifically states that beard covers must be worn, if applicable (i.e. 1/16 inch of facial hair growth). This was the second dress code violation for the claimant that day. As such, management made a decision to discharge claimant from employment for his two dress code violations on March 7, 2018. Claimant was discharged before the end of his shift on March 7, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) 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.

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 that the employer's witnesses' testimony is more credible than claimant's testimony.

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). 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). 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 of the administrative code definition of misconduct is 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.* Negligence does not constitute 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). Further, 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). The law limits

disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). A lapse of 11 days from final act until discharge when claimant was notified on fourth day that his conduct was grounds for dismissal did not make final act a “past act”. *Greene v. Emp’t Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

This was not an incident of carelessness, negligence, or poor work performance. Claimant intentionally failed to wear protective beard covers on two separate occasions on March 7, 2018, in violation of the employer’s reasonable policy. It is clear that claimant’s actions were intentional and they were a substantial violation of the client’s policies and procedures.

The employer has a right to expect that an employee will not jeopardize the liability of the employer by intentionally violating policies that are in place. There is substantial evidence in the record to support the conclusion that claimant deliberately violated these rightful expectations in this case, especially in light of previous dress code warnings. Accordingly, the employer has met its burden of proof in establishing that the claimant’s conduct consisted of deliberate acts that constituted an intentional and substantial disregard of the employer’s interests. These actions rise to the level of willful misconduct. As such, benefits are denied.

DECISION:

The March 29, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs