

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRAD M SHANNON
Claimant

SHAW ELECTRIC INC
Employer

APPEAL 21A-UI-09415-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On April 2, 2021, claimant, Brad M. Shannon, filed an appeal from the March 23, 2021 reference 01, unemployment insurance decision that denied benefits based upon the determination that the employer, Shaw Electric, Inc., discharged him due to dishonesty in connection with his work. The parties were properly notified about the hearing held by telephone on June 10, 2021. The claimant participated personally. The employer did not participate. The administrative law judge denied a subpoena request submitted by claimant because it was not submitted at least three days before the hearing according to Iowa Admin. Code r. 871—26.13.

ISSUE:

Did the employer discharge the claimant for 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 service supervisor beginning on October 1, 2018, and was separated from employment on January 4, 2021, when he was discharged.

The times at which claimant clocked in and out varied with his schedule for the day. At times, he would clock in as he was leaving the house, while other times he clocked in when he arrived at the worksite. The type of job dictated when claimant clocked in and out each day, and whether travel time to and from home was included in his paid time for the day.

Claimant was discharged by his supervisor, John Griener, on January 4, 2021, when the employer alleged that claimant had falsified his time card on two days in December 2020. On Monday, December 14, 2020, the employer alleged that claimant did not start working until 10:15 a.m., but clocked in at 9:30 a.m. Claimant states he was doing work even before 9:30 a.m. that morning, but did not clock in until he initially left his house at 9:30 a.m. On his way to the worksite, he realized he had forgotten necessary equipment for the day, and he returned to

his home to get the equipment. He then went to the worksite and performed the assigned work.

Later that day, claimant called Griener and asked if he could drive his personal vehicle to the last job of the day to cut down on travel time. Griener approved this request, so claimant left his van at his house, and drove his personal vehicle to the final job of the day. He left his work van at his home at 5:30 p.m., and clocked out after finishing the job at 6:30 p.m. The employer reviewed the GPS data from claimant's work van and concluded that he had not started work until 10:15 a.m., and had stopped work at 5:30 p.m.

The following day, claimant was onsite at John Deere doing work. His coworker took claimant's van to town over the lunch hour because the coworker's vehicle had a flat tire. The employer again reviewed the GPS data in claimant's van and concluded that claimant had taken a long lunch without clocking out. Claimant states he was at the worksite and working throughout the time his van was offsite.

Claimant denies falsifying his time cards. He states there had been confusion regarding when to clock in and out in the past, and he had received a warning about the issue in September 2020. However, he also felt Griener's instructions regarding clocking in and out were inconsistent and unpredictable, even after he received the previous warning.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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).

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 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).

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. 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.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

While time card falsification is, in many cases, disqualifying misconduct, here, claimant has alleged credible explanations for the discrepancies noted by the employer. He has also alleged that the instructions provided to him on the previous occasion in which he was counseled about his time card were confusing and inconsistent, which suggests that he did not receive clear instructions regarding how to remedy his conduct. Claimant has credibly alleged what amounts to a miscommunication or confusion about the way in which he reported his time, coupled with a misinterpretation of GPS data from claimant's work van. The employer has not rebutted claimant's testimony, and has not established that he engaged in job-related, disqualifying misconduct. Benefits are allowed.

DECISION:

The March 23, 2021, (reference 01) unemployment insurance decision is reversed. 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.



Alexis D. Rowe
Administrative Law Judge

June 25, 2021
Decision Dated and Mailed

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