

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES C MURPHY
Claimant

WEILER INC
Employer

APPEAL 18A-UI-10990-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/14/18
Claimant: Appellant (2)**

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin r. 871-24.32 – Discharge for Misconduct

STATEMENT OF THE CASE:

James Murphy, Claimant, filed an appeal from the October 30, 2018 (reference 01) unemployment insurance decision that denied benefits because he was discharged from work with Weiler, Inc. due to violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on November 27, 2018 at 11:00 a.m. Claimant participated. Employer participated through Chad Sailors, Human Resources Manager; Jack Wallace, Welding Manager; and Craig Kauffman, Production Manager. Employer's Exhibits 1 - 8 were admitted.

ISSUE:

Whether claimant's separation was a discharge due to 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 welder from February 28, 2018 until his employment with Weiler, Inc. ended on October 10, 2018. Claimant's direct supervisor was Jack Wallace. Claimant's schedule was Monday through Friday, 6:00 a.m. until 2:30 p.m.

In September 2018, claimant asked to purchase material from employer that employer intended to scrap. (Kauffman Testimony) Employer agreed and sold the material to claimant at scrap value. (Kauffman Testimony) Claimant then modified the material into a trailer while at work and using employer's equipment. (Claimant Testimony; Kauffman Testimony) The work was performed by claimant during his lunch break (Claimant Testimony) or after work with his supervisor's approval (Claimant Testimony; Kauffman Testimony) Claimant was given permission to use the employer's weld gasses and weld wire. (Kauffman Testimony) Claimant was not given permission to use the employer's cutting torch. (Kauffman Testimony)

Claimant was away from his work station for a half an hour on October 4, 2018; claimant was given a verbal warning and was told that the next incident would result in a written warning. (Wallace Testimony) Claimant had previously been instructed by his supervisor that if claimant

did not have any production parts to work on, claimant should go to other workers and ask if they had work for claimant to perform. (Claimant Testimony) When claimant was away from his work station on October 4, 2018, he was seeking other work to do according to his supervisor's instructions. (Claimant Testimony)

Claimant made trial weld beads to set up his machine in order to perform his job as a welder. (Claimant Testimony) These trial beads over the course of several weeks resulted in claimant producing pieces of scrap metal. (Claimant Testimony; Exhibit 1 - 3) These items were found in claimant's work area by the production manager, Craig Kauffman, on October 8, 2018. (Kauffman Testimony) Kauffman took photographs of the items; these photographs are Employer's Exhibits 1 through 3. (Kauffman Testimony) In Kauffman's opinion, it would have taken approximately 20 hours of work to create the scrap metal pieces depicted in Exhibits 1 through 3. (Kauffman Testimony) Employer has a policy prohibiting employees from performing work of a personal nature during working time. (Sailors Testimony; Exhibit 6) The policy is included in the employee handbook. (Sailors Testimony) Claimant received a copy of the handbook. (Claimant Testimony; Exhibit 5) Claimant was discharged from employment on October 10, 2018 for performing work of a personal nature during work hours. (Sailors Testimony)

REASONING AND CONCLUSIONS OF LAW:

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

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). 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. 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 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).

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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.*

I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant's version of events to be more credible than the employer's version of those events. Employer alleges that claimant violated a company policy against performing work of a personal nature on work time; however, employer has not proven that the scrap metal claimant created from trial weld beads were a personal project. Claimant's testimony that the items were created over a long period of time was credible and would account for the objects that employer believes would have taken 20 hours to create.

Furthermore, claimant testified that he purchased the scrap metal from employer to construct a trailer and performed all work on his lunch break or after work with his supervisor's approval. Employer admitted to selling claimant the metal and permitting claimant to work after hours and use employer's materials. Claimant sought and obtained permission to use the employer's materials but not the employer's equipment; the administrative law judge is persuaded that employer knew of claimant's intention in constructing the trailer by selling claimant the scrap metal, allowing claimant to work after hours, and allowing claimant to use the employer's weld gasses and weld wire. Claimant's act of using the cutting torch was either a misunderstanding between the parties or a false assumption by claimant that his use of the torch was permitted; either way, it was not an act of substantial misconduct.

Claimant's absence from his work station for a half an hour was due to claimant seeking work to perform when he completed his own work. Claimant took this action at the direction of his supervisor. None of claimant's actions described herein constitute misconduct as defined above. Employer has not met its burden of proving disqualifying, job-related misconduct. Benefits are allowed.

DECISION:

The October 30, 2018 (reference 01) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs