

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL BROWNER
Claimant

APPEAL 20A-UI-08583-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAWN MANUFACUTRING INC
Employer

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

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2) – Discharge Due to Misconduct

STATEMENT OF THE CASE:

Claimant Michael Browner filed an appeal from a July 14, 2020 (reference 03) unemployment insurance decision that denied benefits based upon his discharge from employment with Fawn Manufacturing Inc. (“Fawn”). Browner appeared and testified. Lane Henry appeared and testified on behalf of Fawn. Exhibit 1 was admitted into the record. I took administrative notice of Browner’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

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

FINDINGS OF FACT:

On May 22, 2019, Browner commenced full-time employment as a forklift driver/picker with Fawn. His immediate supervisor was Kevin Sharp.

Brown had interpersonal problems with Sharp. Browner reported he had believed Sharp was mistreating a coworker and when he spoke up, Sharp became irritated with him. Browner reported he complained about Sharp to the plant manager, Tony Tunglind.

On November 26, 2019, Browner received a corrective action notice, which noted he was “yelling and screaming, using profane language. General disorderly conduct.” (Exhibit 1) The corrective action notice noted, “write up – any further violations will result in further discipline up to termination.” The corrective action notice does not provide any specific examples of the behavior Browner engaged in. Lane testified she did not know what Browner had said or what profane or vulgar words he used.

Browner testified on November 26, 2019 he had been promised a raise. Browner spoke with Sharp about the raise several times that day. Sharp told him to talk to Tunglind. Browner learned he was not going to receive the raise and he became upset and walked off. As he was walking off he said to Sharp that he could understand “why you can’t keep no on f-ing here.” Tunglind

was off that day, of the CEO of Fawn met with Browner and Sharp when he received the written warning. Browner reported multiple people use curse words often at Fawn.

On April 7, 2020, Browner was assigned to move metal to the welding department. When he arrived there was no room for the material. Browner went to work on another assignment and he did not move the material that day. The next day two of Browner's coworkers, Donnesha Jones and CharleyAnn Thompson, asked him if he moved the metal, he stated he had not, and that it was their job to complete the task. Browner testified Sharp overheard the conversation and told Browner, "you're fucking lazy, you want to take the easy way out." Browner testified he responded using "fuck," and Sharp told him he was done.

On April 8, 2020, Sharp and Tunglind provided Browner with a corrective action notice that provides, "Michael was observed cussing and yelling at multiple employees this morning. (Blatant violation of Company Rule 16)." (Ex. 1) The notice states Browner had been sent out pending a hearing at 10:00 a.m. on April 9, 2020. (Ex. 1) Browner did not believe he had been or was being terminated. Henry did not have any information on what Browner had said.

Fawn obtained written statements from Browner's coworkers who were working on April 7, 2020, and April 8, 2020. (Ex. 1) A statement from Terry Porter notes Browner was "cursing," but does not indicate what he said. A statement from CharleyAnn Thompson indicates Browner was swearing, but does not indicate what he said or to whom it was directed. A third statement from Donnesha Jones reports Browner "told me that is not his f***** job to look for the baskets that he had lost & that I need to go and find them since it is my job."

Browner was represented by the union. He was discharged after the first grievance. The union proceeded to the second step, but did not pursue the matter to arbitration. Browner was not a member of the union and did not pay dues to the union. Fawn determined Browner had been disciplined for violating Rule 16 in the past and that he had broken the rule again after receiving a written warning. Plant rules 16 and 20 prohibit using profane language and engaging in disorderly conduct.

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.

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.

The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982) 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

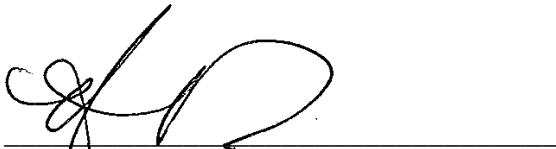
N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986)

Browner admitted using variations of the word "fuck" twice in front of his supervisor. He denied directing the word toward his coworkers. None of his coworkers testified at hearing. His supervisor did not testify at hearing.

Browner relayed many employees used vulgar words at Fawn. "[A]n employer has the right to expect decency and civility from its employees" and an employee's use of profanity, vulgar language, or offensive language "in a confrontational, disrespectful, or name-calling context may be recognized as misconduct" disqualifying the employee from receiving unemployment insurance benefits. *Henecke v. Iowa Dep't of Job Serv.*, 533 N.W.2d 573 (Iowa Ct. App. 1995). The evidence supports Browner was warned once before his termination about using vulgar words. The evidence also supports he used variations of the word "fuck" twice and his supervisor also used the same word in speaking with him. The evidence supports the use of vulgar words was common in the workplace. Sharp was frustrated with Browner. While Fawn had the right to terminate Browner, I do not find Fawn has established Browner engaged in work-connected misconduct that should preclude him from receiving unemployment insurance benefits. Benefits are allowed, provided Browner is otherwise eligible.

DECISION:

The July 14, 2020 (reference 03) unemployment insurance decision denying unemployment insurance benefits is reversed. The employer has not established the claimant was discharged for misconduct 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

September 4, 2020
Decision Dated and Mailed

hlp/mh