

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ISAAC J HOFF
Claimant

METAL WORKS INC
Employer

APPEAL 21A-UI-05980-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/17/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 16, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on April 30, 2021. Claimant Isaac J. Hoff participated and testified. Employer Metal Works, Inc. participated through CEO of operations Philip Ramstack; human resources manager Leanne O'Clair; and controller Tony Poncelet. Employer's Exhibits 1 – 3 were admitted.

ISSUE:

Did claimant voluntarily leave the employment without good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

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 associate from Mary 26, 2020, until January 15, 2021, when he was separated from his employment.

On January 11, 2021, claimant met with Tony Poncelet and to discuss a variety of issues. He expressed frustrations with his coworkers whom he believed were working against him and sharing his private information; concerns regarding the training he received; and concerns about numbness he had in his thumb that he believed was work related. See Exhibit A. Claimant told Mr. Poncelet that he would give his two weeks' notice if things did not improve, but first he wanted to see whether there was a more isolated position available or if things could be worked out with his current position and his coworkers. Mr. Poncelet passed claimant's concerns onto Ms. O'Clair and Mr. Ramstack. They reviewed the positions available and determined there was one that would be considered isolated, but it was filled at the moment.

On January 15, 2021, claimant asked Ms. O'Clair to meet with him to discuss these same concerns. She brought Mr. Ramstack to the meeting, as well as a form she had typed up to

memorialize claimant's resignation. She explained to claimant there were no available positions so employer would accept his verbal resignation. Claimant was surprised by this because he had not submitted his two weeks' notice. He proceeded to raise many of the same issues he'd raised during the January 11, 2021 meeting with Mr. Poncelet. When Ms. O'Clair tried to give claimant the form, he stood up from his seat and left the meeting. Ms. O'Clair walked claimant out of the building. Claimant contacted Ms. O'Clair later that day and indicated his thumb pain was increasing and he did not know if he could wait to see a doctor until Monday. She told claimant to go to the emergency room if the pain worsened. They did not discuss the continuation of claimant's employment.

On January 18, 2021, claimant returned to work at his scheduled time. He provided a doctor's note from the weekend regarding his injury and gave the note to Mr. Poncelet. Mr. Poncelet told him it was his understanding claimant was no longer employed there. Claimant told him that he was unaware of that because he had not resigned. Mr. Poncelet escorted the claimant out of the building.

Claimant received one prior warning for attendance issues.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Claimant told Mr. Poncelet that he might give his two weeks' notice, but he first wanted to see if there was another position available or if things could be worked out with his coworkers and management. Employer determined there was no position available for claimant, but it made no efforts to resolve claimant's other concerns. Further, claimant did not intend to terminate his employment, and returned to work on January 18, 2021, believing he was still employed. As such, the separation was a discharge, the burden of proof falls to the employer, and the issue of misconduct is examined.

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 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.

871 IAC 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 Department of Job Service*, 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.

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). 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).

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.

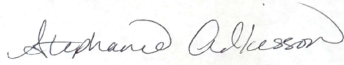
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of 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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to claimant's version of events.

When claimant was discharged there was no current act of misconduct. No evidence was presented that claimant received any warnings other than one attendance-related warning or that he was careless or engaged in a pattern of negligence. There is no evidence of misconduct by claimant. Employer has not met its burden of proving disqualifying job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The February 16, 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.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

May 10, 2021

Decision Dated and Mailed

sa/kmj

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.