

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

Corey Blackmer
Claimant,

v.

Mad City Windows and Baths, LLC
Employer.

**DIA APPEAL NO. 22IWDUI0134
IWD APPEAL NO. 22A-UI-09984**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 3/20/2022
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant, Corey Blackmer, filed an appeal from the April 15, 2022 (Reference 05) unemployment insurance decision that denied benefits based upon a determination that Claimant was ineligible to receive unemployment insurance benefits because he was discharged for failing to follow instructions in the performance of his job. A telephone hearing was held on June 30, 2022. Claimant appeared on his own behalf and testified. Employer appeared through a representative, who testified. The entire administrative file, including the decision under review, was admitted into the record, and the matter is now fully submitted.

ISSUE(S):

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant commenced working for Employer on December 27, 2021 as a manager of installation crews. Employer was in the business of installing windows, bathes, and related products. During the first few months of his employment, he received positive feedback on his performance. However, once his manager changed, Claimant received a verbal warning on March 17, 2022 for failing to manage a miscut panel, a written warning on March 21, 2022, for failing to pull all necessary materials and have proper real time notes, and a discharge on March 24, 2022, for refusal to take materials to an installer in a way that interfered with the job.

After his discharge, Claimant filed for unemployment insurance benefits, and on April 15, 2022, the Department issued a decision denying benefits for failure to follow instructions. Claimant appealed, and at the hearing, Employer's representative testified she did not have a personal knowledge of the events and could not provide any further detail beyond the existence of the three forgoing disciplinary actions. In contrast, Claimant provided direct testimony, stating he followed company policy in the first incident because, when the installer miscut the panel, he told the

installer to make the shower water tight until a new panel could be ordered since there was generally no spare inventory at the warehouse. Unbeknownst to him, the warehouse did have a spare panel that could have been used, and Claimant stated he did not understand why he would be given a verbal warning in these circumstances.

Claimant likewise testified he followed policy during the incident giving rise to the written warning because what occurred is that he placed a tub to be installed to the side in the warehouse to avoid a tripping hazard and the installation crew did not see it and take it to the job. This, according to Claimant, was inadvertent and not a violation of any policy, and he further stated he followed the same notation procession he had used for months without incident. Finally, Claimant stated he followed policy during the matter giving rise to the third incident of March 24, 2022, because he did not fail to take any materials to an installer. According to Claimant, on the day in question, the installer he spoke with did mention perhaps needing an extra sheet of wood but declined Claimant's offer to go pick one up when asked. Claimant is at a loss for why this incident even exists as the installer did not, in fact, need the extra wood to complete the job.

Given Claimant testified with personal knowledge concerning incident and Employer could offer no specific contrary evidence, as its witness had no personal knowledge or detailed company records, Claimant's testimony is found credible, which is in accord with his sincere and earnest demeanor at the hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §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.
2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

The employer has the burden of proving that a claimant's departure from employment was voluntary. Irving v. Emp't Appeal Bd., 883 N.W.2d 179, 209 (Iowa 2016). "In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." Id. at 207 (citing Cook v. Iowa Dep't of Job Serv., 299 N.W.2d 698, 701 (Iowa 1980)).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5(1), (2)(a). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. Wills v. Emp't Appeal Bd., 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Emp't Appeal Bd., 492 N.W.2d 438, 440 (Iowa App. 1992). 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); Peck v. Emp't Appeal Bd., 492 N.W.2d 438 (Iowa App. 1992).

By contrast, discharge for misconduct means:

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.

Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979) (citing the then version of Iowa Admin. Code r. 871-24.32(1)). 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). 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). 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).

In this case, no dispute exists Employer discharged Claimant from work on March 24, 2022; Claimant did not quit. As such, Employer bears the burden of providing misconduct, which it has not done because the record is devoid of evidence indicating Claimant violated any company policy beyond the existence of the disciplinary action Claimant credibly disputes. In each instance, Claimant testified he was following known company policy and the issue either did not exist or was not his fault. Without any contrary evidence to this otherwise credible testimony, there was no misconduct. Accordingly, the Department's decision must be REVERSED.

DECISION:

The April 15, 2022 unemployment insurance decision (Reference 05) is REVERSED. Claimant is eligible to receive benefits. Any benefits claimed and withheld on this basis shall be paid.



Jonathan M. Gallagher
Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division

July 1, 2022

Decision Dated and Mailed

CC: Corey L Blackmer, Claimant (by First Class Mail)
Mad City Windows & Baths, LLC, Employer (by First Class Mail)
Natali Atkinson, IWD (By Email)
Joni Benson, IWD (By AEDMS)

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiere firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.

Case Title: BLACKMER V. MAD CITY WINDOWS & BATHS, LLC
Case Number: 22IWDUI0134
Type: Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Jonathan Gallagher", written over a horizontal line.

Jonathan Gallagher, Administrative Law Judge

