

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ENRIQUE A ALMANZA
Claimant

AUTOZONERS LLC
Employer

APPEAL 17A-UI-06644-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/04/17
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the June 26, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 18, 2017. Claimant participated. Employer participated through district manager Michael Day. The employer's proposed exhibits were not admitted as they were not provided to claimant.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time parts sales manager through June 5, 2017. A customer complained on May 26 that claimant refused him service and treated him rudely that morning. The customer purchased a lightbulb and wanted assistance installing it. Claimant and one other employee were working at the time and other customers were waiting. The employer requires employees to assist with product installation if the store is not busy, there is not inclement weather or if they are able to install the part on that model of vehicle. Had the customer waited or returned when the store was not so busy, claimant would have helped him install the part. Day investigated the matter by speaking with the customer but did not seek a response from claimant before forwarding the discharge decision to human resources. There was no surveillance video and Day did not review store receipts for the level of activity or interview the other employee on duty. Claimant did have other warnings about customer complaints.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607

(Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14(1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

Iowa Code section 96.5(2)a provides:

Causes for disqualification.

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. *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).

Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). ...the definition of misconduct requires more than a "disregard" it requires a "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." Iowa Admin. Code r. 871-24.32(1)(a) (emphasis added).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) *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.

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.

Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

The decision in this case rests, at least in part, upon the credibility of the parties. While the quantity of the warnings related to customer complaints is concerning, that alone does not establish misconduct. The employer did not present a witness with direct knowledge of the situation, such as the other on-duty employee, did not interview the claimant prior to making the decision to discharge, and did not present detailed notes of the complaints or customer statements. Claimant's explanation of the reasons why he was not able to help the customer install the light on May 26, is credible and reasonable. The employer has not met its burden of proof to establish a current or final act of misconduct, and, without such, the history of other incidents need not be examined.

DECISION:

The June 26, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs