

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELLIS F WILSON
Claimant

ELDER CORPORATION
Employer

APPEAL 20A-UI-10983-BH-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (2)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause
Iowa Code section 96.5(2)(a) – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(1)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Ellis F. Wilson appealed the July 22, 2020 (reference 01) unemployment insurance decision that denied benefits. The agency properly notified the parties of the hearing. The undersigned presided over a telephone hearing on October 23, 2020. Wilson participated personally and testified. Elder Corporation (Elder) participated through Jodi Allan, who works in human resources and testified.

ISSUES:

Was Wilson's separation from employment with Elder a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

Did Elder discharge Wilson for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Most recently, Elder hired Wilson on September 23, 2019. Wilson worked full time as a laborer. Elder discharged Wilson on May 1, 2020.

Elder has an attendance policy. Wilson missed work on April 25 and April 30, 2020. On April 30, 2020, he was absent without notifying Elder. Under the Elder attendance policy, such an absence without notice calls for discharge.

But Elder did not discharge Wilson or prepare to do so. Allan testified credibly that Wilson's absences did not factor into its decision to discharge him. Rather, Elder discharged Wilson because of what happened on May 1, 2020.

On May 1, 2020, Wilson sent a text message to his immediate supervisor, Brian Bishop. He informed Bishop that he had relapsed and was checking himself into a rehabilitation center before things got out of control. Wilson testified credibly that Bishop instructed him to submit documentation to Elder that he was in the rehabilitation center and the company would place him on layoff until he checked out of the center.

However, according to Allan's credible testimony, Elder could not hold Wilson's position open while he was checked into the rehabilitation center. Bishop and Allan made the decision to discharge Wilson in response to him checking into the rehabilitation center because Elder could not keep his position open. Nobody informed Wilson of the decision. He found out Elder had discharged him on May 1, 2020, when he learned the company had protested his claim for unemployment insurance benefits.

Wilson took his appeal to the IowaWORKS center in Des Moines, Iowa, on the seventh day after the date of the July 22, 2020 (reference 01) decision. He believed that the agency had accepted his appeal. However, the agency erred and did not get his appeal processed.

After Wilson heard nothing from the Appeals Bureau, he returned to the IowaWORKS center for help on September 8, 2020. Staff gave him the Appeals Bureau phone number, which he called. Wilson learned the Appeals Bureau had not received his appeal. With the help of IowaWORKS staff, he resubmitted his appeal on September 8, 2020.

REASONING AND CONCLUSIONS OF LAW:

TIMELINESS OF APPEAL

Iowa Code section 96.6(2) requires appeals to be filed within ten days for them to be timely. Iowa Administrative Code rules 871-24.35(2) states:

The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

It is common for parties to submit appeals regarding unemployment insurance benefits at IowaWORKS centers with the help of staff. After a party gives staff an appeal, staff file the appeal with the Appeals Bureau that same day on behalf of the party. The evidence shows it is more likely than not that is what Wilson did on July 29, 2020, within the ten-day appeal window under the law.

However, agency staff erred and did not submit Wilson's appeal to the Appeals Bureau. Wilson waited for notice of his appeal hearing, but it did not come. On September 8, 2020, he returned to the IowaWORKS center for help. After discovering the agency erred and did not process his appeal correctly, he refiled his appeal that same day. Even though the appeal from which this decision stems was not filed within ten days of the July 22, 2020 (reference 01) decision, it is nonetheless considered timely under rule 871-24.35(2) because agency error caused it to ultimately be filed more than ten days after the date of the representative's decision that has been appealed.

ELIGIBILITY FOR BENEFITS

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

Iowa is an at-will employment state, which means that an employer has the right to discharge an employee for any reason (so long as doing so does not violate a statute or undermine a public policy) or no reason at all. Consequently, this decision does not consider whether Elder was in the right when it discharged Wilson. Rather, the question this decision answers is whether the reason for Elder's decision to discharge Wilson disqualifies him from unemployment insurance benefits under the Iowa Employment Security Law, Iowa Code chapter 96.

When the legislature created Iowa's unemployment insurance system, it codified a "guide for interpretation" for agencies such as Iowa Workforce Development and the Department of Inspections and Appeals, as well as the courts, in Iowa Code section 96.5(2), which states:

As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

Stare decisis is a bedrock principle of American law that applies to the agency the same as Iowa courts. Consequently, Iowa Supreme Court precedent on the effect of section 96.2 when

interpreting the statute controls in this appeal. The court has articulated the following standard when interpreting chapter 96:

We are to construe the provisions of that law liberally to carry out its humane and beneficial purpose. *Dirksen v. Employment Appeal Bd.*, 477 N.W.2d 381, 382 (Iowa 1991). Conversely, we are to interpret strictly the law's disqualification provisions, again with a view to further the purpose of the law. See *Diggs v. Employment Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa App.1991). The approach we take is faithful to the underlying purpose of the law and the principles we follow in interpreting it.

Bridgestone/Firestone, Inc. v. Employment Appeal Bd., 570 N.W.2d 85, 96 (Iowa 1997).

The disqualification provision at issue here is Iowa Code section 96.5(2)(a), which dictates that an individual is disqualified from benefits if IWD finds that the employer discharged the individual for "misconduct in connection with the individual's employment." The legislature did not define "misconduct" in the statute. But the agency did in rule 871-24.32(1)(a), which states:

"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.

Over the years, the Iowa Supreme Court has consistently held the definition in this administrative rule accurately reflects the intent of the legislature. *E.g.*, *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Moreover, the court has held, "The definition of 'misconduct' in the administrative code focuses on whether the employee's conduct was deliberate, intentional, or culpable." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665-66 (Iowa 2000) (citing *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa App. 1986); *Savage v. Employment Appeal Bd.*, 529 N.W.2d 640, 642 (Iowa App. 1995); and *Roberts v. Iowa Dep't of Job Serv.*, 356 N.W.2d 218, 222 (Iowa 1984).

Iowa Administrative Code rule 871-24.32(4) states:

The claimant's statement and the 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.

Under Iowa Administrative Code rule 871-24.32(8),

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.

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). 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).

Here, Elder introduced evidence that Wilson was absent from work twice in the week prior to him giving notice that he was checking into a rehabilitation center to help him manage an addiction. Elder made clear that these absences did not factor in the decision to discharge Wilson even though the second one was an absence without notice which should have resulted in discharge under its attendance policy. The evidence establishes it is more likely than not that Elder discharged Wilson because he checked into a rehabilitation center and the company could not keep his position open while he was in the center and not because of any absences from work.

It is of course the prerogative of Elder to decide whether it can afford to keep a position open, from a business perspective, while an employee is checked into a rehabilitation center. This decision does not address whether Elder's assessment of the situation was right or wrong in the everyday business sense or under the law. The question is whether Elder's decision to discharge Wilson because it could not keep his position open while he was checked into a rehabilitation center constitutes misconduct by Wilson. It does not.

Rule 871-24.32(1)(a) defines misconduct using the frame of what type of behavior an employer has the right to expect from an employee. An employer does not have the right to expect an employee battling addiction not to seek help in doing so by checking into a rehabilitation center. Likewise, an employer does not have the right to expect an employee to not seek a leave of absence or layoff while he does so. Elder made the decision to discharge Wilson because he, in effect, requested a leave of absence (though termed a "layoff" by he and his supervisor in discussions) so he could check into a rehabilitation center and overcome addiction. Requesting what is substantively a leave of absence to check into a rehabilitation center is not misconduct under Iowa Code section 96.5(2)(a) and rule 871-24.32(1)(a).

For these reasons, Elder failed to meet its burden to prove misconduct. The evidence establishes it is more likely than not that Elder discharged Wilson for no disqualifying reason under Iowa law. Wilson is entitled to benefits, provided he is otherwise eligible.

DECISION:

The July 22, 2020 (reference 01) unemployment insurance decision is reversed. Elder discharged Wilson from employment for no disqualifying reason. Benefits are allowed, provided Wilson is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is enclosed in a light gray rectangular box.

Ben Humphrey
Administrative Law Judge

October 27, 2020
Decision Dated and Mailed

bh/sam