

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COLTON A BORNHOLTZ
Claimant

PORT NEAL WELDING INC
Employer

APPEAL 20A-UI-09134-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 24, 2020 (reference 01) unemployment insurance decision that denied benefits based upon his separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on September 14, 2020. The claimant, Colton Bornholtz, participated personally and testified. Claimant was represented by attorney, Jacqueline Johnson. Dan Lee participated and testified on behalf of the employer, Port Neal Welding Inc. No exhibits were admitted.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a welder beginning November 28, 2016 until March 31, 2020. Claimant's immediate supervisor was Ashton Lee.

Dan Lee had imposed a company wide travel restriction during the Covid-19 pandemic. Mr. Lee testified that imposing the travel restriction on his employees was recommended by the CDC and the Siouxland Public Health Department, Mercy Occupational Health and Iowa Department of Public Health. Mr. Lee testified that he was concerned that claimant continued to travel to Omaha to visit his girlfriend despite the imposed restriction. Because claimant decided to travel to Omaha to visit his girlfriend over the weekend, in violation of the employer's travel restriction, Mr. Lee informed claimant on March 30 that claimant would need to quarantine for 30 days and apply for unemployment.

On March 31, 2020, claimant did not report to work. Claimant testified that he understood he was on a 30 day quarantine because of his out of state travels to visit his girlfriend the weekend before. On April 1, 2020 claimant testified that he texted Dan Lee asking about his job but claimant received no response. On April 2, claimant testified that he texted Ashton Lee asking about his job, but received no response. On April 3 at 2:45 p.m., claimant testified that he texted Ashton Lee again asking about his job. At 6:15 pm that day, Dan Lee texted claimant

stating that he was considering claimant to have voluntarily quit when he did not show up for work on Tuesday, March 31, 2020. Claimant testified that he asked about getting his job back and Dan Lee responded that he couldn't have his job back and he would need to have someone pick up his tools from the shop as he was no longer employed with the company. Claimant testified that unemployment was his only option.

Dan Lee testified that all the other company employees were able to follow the company rules imposed when the Covid-19 pandemic hit and not travel out of state.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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.

In this case, the claimant did not express an intent to terminate the employment relationship. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In fact, on April 1 through April 3, claimant made several attempts to communicate with the employer to ask about the status of his job via text message, showing a desire to continue his relationship with his employer. Claimant first learned that he was no longer employed with the employer on April 1. Because he wasn't sure about his work status, claimant continued to text Dan Lee. On April 3, claimant was informed by Dan Lee that he was considered to have voluntarily quit when he didn't go to work on March 31. At that time, claimant still asked if he could return to work but was informed he could not, and that he needed to have someone pick up his tools from the shop.

Iowa Code section 96.5(2)a provides: 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. Iowa Admin. Code r. 871-24.32 provides in relevant part: 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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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' interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the claimant's recollection of those events.

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). There is no indication that claimant's separation from employment was due to misconduct. While claimant did fail to follow the travel restriction imposed by the employer due to the Covid-19 pandemic, claimant did not understand that by violating the rule he was at risk of being discharged or being considered a voluntary quit. Instead, claimant understood from his conversation with Dan Lee that the result of traveling out of state would be a period of quarantine. Claimant is therefore not disqualified from benefits based on the separation.

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).

871 IAC 24.32(4) provides:

(4) Report required. 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.

871 IAC 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.

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).

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).

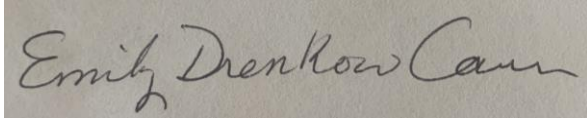
In this case, it is clear that the claimant was discharged from employment, however, the employer fails to meet its burden of proof in establishing disqualifying job misconduct. The claimant traveling to Omaha over the weekend to visit his girlfriend, while deliberate, is not a material breach of the duties and obligations arising out of the employment relationship. That incident alone is not substantial enough to demonstrate the willful or wanton disregard required to be disqualifying job misconduct.

Additionally, as the termination of employment must be based on a current act, the employer did not provide evidence of any past acts of misconduct.

Thus, the employer failed to meet its burden of proof in establishing disqualifying job misconduct. As such, benefits are allowed.

DECISION:

The July 24, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

A handwritten signature in cursive script, reading "Emily Drenkow Carr", written in dark ink on a light-colored, textured background.

Emily Drenkow Carr
Administrative Law Judge

September 29, 2020
Decision Dated and Mailed

ed/mh