

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN GARDNER
Claimant

HAYDEN CONSTRUCTION LLC
Employer

APPEAL 22A-UI-05234-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/05/21
Claimant: Appellant (5R)**

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

STATEMENT OF THE CASE:

On February 25, 2022, Brian Gardner (claimant/appellant) filed a timely appeal from the Iowa Workforce Development (“IWD”) decision dated February 21, 2022 (reference 04) that disqualified claimant from unemployment insurance benefits based on a finding that he voluntarily quit work without good cause attributable to employer on December 10, 2021.

A telephone hearing was held on April 7, 2022. The parties were properly notified of the hearing. The claimant participated personally. Judy Phelps participated as a witness for claimant. Hayden Construction LLC (employer/respondent) participated by Owner Ben Jordan. Office Manager Julie Danley participated as a witness. Official notice was taken of the administrative record.

ISSUES:

- I. Was the separation from employment 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 has worked off and on for employer for several years. Claimant most recently performed work for employer beginning November 9, 2021. Claimant was employed as a laborer. Mr. Jordan was claimant’s immediate supervisor. The last day claimant performed work for employer was November 24, 2021. Employer discharged claimant on November 28, 2021.

Mr. Jordan did not formally discharge claimant at that time but stopped scheduling him for work after that date and eventually asked that his work equipment be returned. Mr. Jordan discharged claimant due to his failing to follow instructions in the course of his work, taking extended breaks without permission, and complaining about his work assignments.

On the last day worked claimant was performing work in the home of a homeowner Mr. Jordan had worked with on many occasions. The homeowner reported to Mr. Jordan that claimant was

taking extended breaks on that date. Claimant took approximately two hours of breaks when only one hour was allotted. This upset the homeowner because he was paying for work by the hour. Mr. Jordan had no reason to disbelieve the homeowner due to his long-term business relationship with him and due to his own observations of claimant's past performance. Claimant was aware that he was allotted two 15-minute breaks and one 30-minute break each work day.

Mr. Jordan also discovered that claimant had performed work out of order on the job, despite Mr. Jordan going to the job site that morning and specifically instructing claimant what work to do and in what order. When confronted with his failure to follow instructions claimant wrote to Mr. Jordan via text message "thanks for all the shit work nobody wants to fuck with." Mr. Jordan then informed claimant there was no work available for him the following week. Mr. Jordan had no intention of scheduling claimant for any work after that date and did not do so, instead asking that work equipment be returned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated February 21, 2022 (reference 04) that disqualified claimant from unemployment insurance benefits based on a finding that he voluntarily quit work without good cause attributable to employer on December 10, 2021 is MODIFIED with no change in effect.

As an initial matter, the administrative law judge finds claimant did not quit but was discharged. While Mr. Jordan did not formally discharge claimant, he stopped scheduling him for work after November 28, 2021 and eventually asked that his work equipment be returned. In so doing Mr. Jordan severed the employment relationship. Claimant did not have the option of remaining employed nor did he express intent to terminate the employment relationship. Where there is no expressed intention or act on the part of the claimant 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).

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 employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

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 administrative law judge found Mr. Jordan's testimony to be more credible and reliable than claimant's. Claimant testified that he did not take extended breaks. However, there is no discernible reason why the homeowner or Mr. Jordan would fabricate claimant taking extended breaks. Furthermore, claimant's complaining about the "shit job" – which he did not deny – and his failing to follow instructions tends to support that he did not wish to perform the work and took extended breaks to avoid doing so. Factual findings were made accordingly.

Employer has 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). Mr. Jordan effectively discharged claimant due to his failing to follow instructions in the course of his work, taking extended breaks without permission, and complaining about his work assignments. These were current and deliberate violations of the standards of behavior which the employer had the right to expect of claimant and rise to the level of substantial job-related misconduct.

The decision is modified to reflect that the separation was a discharge rather than a voluntary quit and that the date of separation was November 28, 2021 rather than December 10, 2021. The effect of the decision is unchanged.

DECISION:

The decision dated February 21, 2022 (reference 04) that disqualified claimant from unemployment insurance benefits based on a finding that he voluntarily quit work without good cause attributable to employer on December 10, 2021 is MODIFIED with no change in effect.

Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount.

REMAND:

This matter is remanded for a determination and issuance of an unemployment insurance decision as to whether claimant has been overpaid unemployment insurance benefits.



Andrew B. Duffelmeyer
Administrative Law Judge

April 12, 2022
Decision Dated and Mailed

abd/abd