

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENNETH W SMITH
Claimant

**VERMEER MANUFACTURING COMPANY
INC**
Employer

APPEAL 18A-UI-05549-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/22/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 10, 2018 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment insurance benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on June 6, 2018. The claimant, Kenneth W. Smith, participated personally. The employer, Vermeer Manufacturing Company Inc., participated through witnesses Morgan Landon and Amy Heaberlin. Employer's Exhibit 1 was admitted.

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 full-time as a manufacturing engineering technician. Claimant was employed from October 25, 1993 until April 23, 2018, when he was discharged from employment. Claimant's normal working hours were 6:00 a.m. to 2:30 p.m. Claimant's immediate supervisor at the time of his discharge was Ms. Heaberlin.

This employer has a written policy in its employee handbook that states, "[t]eam members who report to work, then leave the workplace during a scheduled shift and do not follow the absence reporting process are subject to disciplinary action up to and including termination or, depending on the circumstances, may be considered a voluntary resignation". See Exhibit 1. The policy also provides "[t]eam members who fail to report their absence to their manager prior to the start of their scheduled shift, who fail to report their absence at any point during a scheduled shift or who are absent from the workplace without manager authorization" is considered an unauthorized absence. See Exhibit 1. Claimant acknowledged receipt of the handbook on December 10, 2016. See Exhibit 1.

On April 16, 2018, it was reported that claimant displayed inappropriate and unprofessional behavior by making comments with sexual connotation and behaviors that did not fall in line with

the company's code of conduct regarding respectful workplace. See Exhibit 1. Claimant received a three-day suspension and was absent from work due to the suspension on April 17, 18, and 19, 2018. The written documentation regarding the suspension warned the claimant "[f]ailure to follow company policies or procedures may result in further disciplinary action up to and including termination". Claimant returned to work on April 20, 2018.

The final incident leading to discharged occurred on April 20, 2018 when the claimant left his scheduled shift early at 1:45 p.m. instead of 2:30 p.m. Claimant left his shift early because the person he rode to work with was leaving early. Claimant lives approximately 16 miles from work. Claimant did not attempt to find another method of transportation home. Claimant did not notify or seek permission to leave early from his supervisor, Ms. Heaberlin, or any other supervisor in the facility. It was learned that claimant left early when management reviewed his timecard. Claimant was discharged when he returned to work on Monday, April 23, 2018 for violation of the employer's written policy regarding notification and authorization to leave a scheduled shift early.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

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

Iowa Code § 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.

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. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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.

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). 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 of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

This was not an incident of carelessness or a good faith error in judgment. Claimant deliberately left his scheduled shift early without notifying or seeking permission to leave from any supervisor the first day he came back from a suspension due to violation of the employer's policies. This was in violation of the employer's reasonable written policies regarding notification and seeking permission to leave from a supervisor. Claimant had knowledge of the policy and there was no emergency that kept him from complying with the policy. Claimant's actions constitute a material breach of his work-related duties.

It is reasonable that an employer expects an employee to notify a supervisor of his or her absence. There is substantial evidence in the record to support the conclusion that the claimant deliberately violated and disregarded these standards of behavior. Claimant was on notice that

his job was in jeopardy, given his previous suspension from employment during that same week, which was also due to claimant's violation of the employer's policies and standards of behavior. Claimant's deliberate actions on April 20, 2018 rise to the level of willful job-related misconduct. As such, benefits are denied.

DECISION:

The May 10, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs