

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTHONY M MIYOSE
Claimant

AMPC INC
Employer

APPEAL 20A-UI-15624-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/09/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On November 23, 2020, Anthony Miyose (claimant) filed an appeal from the November 16, 2020, reference 01, unemployment insurance decision that denied benefits based upon the determination AMPC, Inc. (employer) discharged him for violation of a known company policy. The parties were properly notified about the hearing held by telephone on January 26, 2021. The claimant participated, and he was represented by MaKayla J. Augustine, Attorney. The employer responded to the hearing notice in writing and stated they were not protesting the claimant's claim for unemployment insurance benefits. The Claimant's Exhibits 1 through 5 were admitted into the record.

ISSUE:

Did the employer discharge the claimant for job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a production employee beginning on March 23, 2020, and was separated from employment on August 13, 2020, when he was discharged. The claimant's supervisor was Jason Lamont. The employer has a policy against using profanity at work.

On August 13, the claimant engaged in a verbal dispute with Lamont. The claimant said that the employer was running a "cartoon operation." (Claimant's Testimony) However, Lamont and another witness reported that the claimant said, "cock biteing [sic] cooperation [sic]." (Exhibit 4) The claimant was discharged for using inappropriate language at work. He had not received any prior warnings related to similar conduct.

REASONING AND CONCLUSIONS OF LAW:

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

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.

...

(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.

This definition of misconduct 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 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). In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all, if it is not contrary to public policy. However, if it fails to meet its burden of proof to establish job related

misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

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."

The employer has not met the burden of proof to establish that the claimant engaged in misconduct on August 13. The claimant's unrefuted testimony is that he did not use profanity when speaking with Lamont. Accordingly, benefits are allowed, provided he is otherwise eligible.

DECISION:

The November 16, 2020, reference 01, unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Stephanie R. Callahan
Administrative Law Judge

February 11, 2021
Decision Dated and Mailed

src/scn