

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANIEL STEFFENS

Claimant

APPEAL NO. 20A-UI-11599-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AM BUILDERS IOWA LLC

Employer

OC: 08/23/20

Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 10, 2020, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 2, 2020. Claimant participated personally. Employer participated by Bethany Olson, Anton Olson, and Gail Rix.

ISSUE:

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 7, 2020.

Employer discharged claimant on May 7, 2020 because claimant, who was acting as a superintendent for crews working in carpentry and concrete, had multiple errors in the work he presided over after warnings. These errors cost employer a great sum of money.

Claimant had experience as a general supervisor for another employer prior to be hired by AM Builders. During that job he had supervisory experience on all aspects of building. When claimant was hired by builder, claimant stated he wasn't asked about supervising anything involving concrete work. Employer stated that claimant indicated he was experienced in all aspects of construction.

Employer's construction business dried up with the onset of Covid, forcing employer to focus more on the concrete part of the business. Claimant was given tasks and explanations about the actions of his crew and how long it should take to complete tasks. Claimant would repeatedly not have his crew complete tasks in a timely basis and on multiple occasions work that claimant oversaw had to be corrected at great cost.

On or around April 27, 2020 employer spoke with claimant about his not filing all necessary reports and about the need for him to operate within the guidelines set for him. After this date claimant was not consistent with his filing of documents and had another major error in laying of cement on May 7, 2020. This led to claimant's termination on that date.

Employer did not indicate that claimant at any time was able to fully and properly carry out his duties.

REASONING AND CONCLUSIONS OF LAW:

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(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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

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*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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).

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning misconduct in the performance of his superintendent duties.

The last incident, which brought about the discharge, fails to constitute misconduct because employer did not satisfy the requirement that claimant was ever competent to execute his duties as a superintendent over other construction workers. Claimant was never competent to work as a concrete superintendent, and employer did not show that claimant's lack of successfully execution of his job occurred as a result of carelessness, negligence or a willful or wanton neglect of duties. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated September 10, 2020, reference 02, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

November 6, 2020
Decision Dated and Mailed

bab/mh