

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANNA K MCDANEL
Claimant

TITAN TIRE CORPORATION
Employer

APPEAL NO. 14A-UI-10286-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/31/14
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 23, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 21, 2014. Claimant participated personally. Employer participated by Joyce Kain, Human Resources Consultant. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue in this matter is 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 August 26, 2014.

Employer discharged claimant on August 28, 2014 because claimant made derogatory statements to out of town sales representatives associated with the company about the president of the company, and about her manager.

Claimant was at a dinner function where company officials, and other employees throughout the country were in attendance. One of the out of town sales representatives, Dave Green asked claimant how she liked working for employer. Claimant began explaining how she did not like working for employer, and that her supervisor, Lisa Lillard and the president of the company, Steve Briggs were incapable leaders who were not doing their jobs. Mr. Green tried to change the subject several times, but eventually had to abruptly end the conversation and extricate himself from the claimant to avoid being involved in the inappropriate conversation.

REASONING AND CONCLUSIONS OF LAW:

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(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.

Iowa Admin. Code r. 871-24.32(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.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. *Sallis v. EAB*, 437 N.W.2d 895 (Iowa 1989). Disqualification for a single act of misconduct incident must be a deliberate violation or disregard of standards of behavior which employer has a right to expect. *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991).

The term "misconduct" under Iowa law may encompass many different types of conduct. The phrase "material breach of a worker's contract of employment" is significant. This phrase essentially means that the employer must prove the worker intentionally violated a reasonable standard of the employer. The rule essentially anticipates two general types of misconduct under Iowa law, broadly categorized as universal misconduct and work rule misconduct. Universal misconduct would include misconduct which any reasonable worker should reasonably know is a violation of any employer's work standards. Examples of this type of misconduct would include theft from the employer, initiating violence in the workplace without justification, intentionally damaging property and other intentional acts evincing a willful disregard for the employer's interest. In other words, any worker in the competitive job market should understand that they would be fired for such a violation regardless of whether a formal work rule is in place. "Work rule" misconduct would include reasonable standards or rules which an employer sets for its place of employment which a worker knowingly violates. In essence, it is a standard because the employer announced it as an important business standard. In such instances, the burden is upon the employer to demonstrate that it had a reasonable work rule, the worker was aware of the rule, and knowingly violated the rule. Examples of this type of "work rule" misconduct would include tardiness violations, violations of a cell phone use policy, and dress code violations. Importantly, different employers and different industries may have different reasonable work standards on these topics and acceptable behavior is often relative.

In this matter, the claimant's actions constituted misconduct because she breached her duty of loyalty to the employer. Mere venting about a difference of opinion or voicing a concern to management is not inappropriate and does not constitute misconduct. Explaining how your manager and president of the local branch are incapable of managing employees, and that they are incompetent as leaders is misconduct that does evince a willful or wanton disregard of the employer's interest and a disregard of the standards of behavior which the employer has the right to expect of employees. Benefits are denied.

DECISION:

The decision of the representative dated September 23, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs