

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN B YORK
Claimant

WILSON RESTAURANT SUPPLY INC
Employer

APPEAL 19A-UI-09375-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/03/19
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 22, 2019 (reference 02) unemployment insurance decision that denied benefits based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on December 23, 2019. The claimant, Brain B. York, participated personally. Christine York observed on behalf of the claimant. The employer, Wilson Restaurant Supply Inc., participated through witness Jeff Wilson. 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 service technician from September 14, 2018 until his employment ended on October 9, 2019. Claimant's job duties included making repairs and installations on restaurant equipment. Terry Recker was claimant's immediate supervisor.

On October 2, 2019, claimant received a written warning for missing too many days, having sloppy paperwork and customers not wanting the claimant to return for additional jobs. See Exhibit 1. Claimant was put on probation at that time. Claimant had no absences between October 2, 2019 and October 9, 2019. His last absence was on October 1, 2019 and it was due to personal illness. Claimant had contacted Mr. Recker prior to his shift beginning to notify him he was unable to work on October 1, 2019.

On October 8, 2019, claimant completed a job installing an ice machine. Claimant was instructed by his supervisor to ride with the delivery person to install the machine instead of driving his own service van. Claimant only had his hand tools with him for the installation. Four hours after claimant installed the ice machine, the customer complained that it was leaking. A manufacturer's clamp on a hose inside of the machine was faulty. Claimant returned and fixed the faulty clamp. The claimant was not negligent in installing the machine, rather, the

manufacturer clamp was faulty on the machine to begin with. Claimant was discharged following his installation of the ice machine and the customer complaint about the leak.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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

Iowa Code section 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

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:

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. Iowa Code § 96.6(2); *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). 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). The misconduct must be "substantial." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) (citation omitted). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. *Id.* (citation omitted). Mere negligence is not sufficient. *Id.* at 666.

When the conduct is based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 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." *Greenwell v. Emp't Appeal Bd.*, 879 N.W.2d 222, 228 (Iowa Ct.App. 2016)(citing Iowa Admin. Code r. 871-24.32(1)a).

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.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's first-hand testimony that the manufacturer's clamp was faulty on the ice machine is credible.

There was no credible evidence presented that the claimant's actions in installing a leaking ice machine were a deliberate act or omission which constituted a material breach of his duties and

obligations as an employee, or that these actions rose to the level of carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design.

In this case, the employer has failed to meet its burden of proof in establishing disqualifying job-related misconduct. As such, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The November 22, 2019 (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn