

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BENJAMIN R DITTMER
Claimant

VETTER EQUIPMENT CO INC
Employer

APPEAL NO. 17A-UI-09217-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/06/17
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 August 31, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 27, 2017. Claimant participated personally. Employer participated by Tim Wilcox and Kevin Heisterkamp.

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 2, 2017. Employer discharged claimant on August 2, 2017 because employer alleged that claimant had an ongoing lack of attention to detail that resulted in the other mechanics having to make up for claimant's errors.

Employer detailed multiple incidents wherein the claimant had not adequately done his job as a service tech on machinery for employer. The last, most recent incident occurred on July 28, 2017, when claimant worked on a combine. The owner of the combine wasn't happy with the work done, and when another mechanic inspected the work, it was found that there were a half dozen issues which should have been attended to, but weren't. Amongst those issues was the fact that the combine was missing chopper blades – a fact that is easily verified through looking at the back of the combine. In addition to this, other matters hadn't been attended to on the combine.

Employer listed multiple other issues surrounding particular devices claimant had worked on, and stated particular customers who'd recently requested that claimant not work on their gear. Employer stated that claimant had been specifically told that he needed to step his game up within a month prior to claimant's termination. There were no formal warnings given to claimant prior to his termination.

Employer stated that claimant was a fine worker up until recent actions seemed to show his lack of caring for his work. Recently, claimant would refuse assignments, and was often late to work.

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.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning attention to detail in work.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew that he wasn't putting out the quality of service expected by employer. Claimant had the ability to do the jobs requested of him, but would refuse to do work, do work that had to be corrected by others, and overlook matters that should be known to all service technicians. As this occurred more than infrequently after employer had told claimant to step up his game, the actions amount to terminable misconduct. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated August 31, 2017, 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.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn