

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT JONES
Claimant

APPEAL 21A-UI-22183-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EARTH SERVICES & ABATEMENT INC
Employer

**OC: 01/31/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant, Robert Jones, filed an appeal from the September 30, 2021, (reference 04) unemployment insurance decision that denied benefits based upon the determination that the employer, Earth Services & Abatement, Inc., discharged claimant for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on December 14, 2021. The claimant participated with his attorney, Samuel J. Aden. The employer participated through Lena Evanson. Claimant's Exhibits 1 and 2 were 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 foreman from April 20, 2020, until this employment ended on August 25, 2021, when he was discharged.

The morning of August 25, 2021, claimant was at the jobsite working as a laborer. He had just returned from leave related to a work injury, and he questioned why he was working as a laborer rather than a foreman. One of the mechanics approached claimant and told him that he needed to be careful because the employer was looking for any reason to discharge him. Then, a short while later, claimant's supervisor, Jason Martin, came to the jobsite. Martin had no reason about which claimant knew to be at the jobsite and did not get out of his car. Claimant interpreted this as an intimidation tactic. Claimant approached Martin and asked why Martin had never contacted claimant to inquire about his well-being while claimant had been on leave. Claimant also told Martin that the fact that Martin was at the jobsite with his gun did not intimidate claimant. Claimant explained that Martin made it known to many at the employer that he carried his gun with him all of the time.

Later in the day on August 25, 2021, the employer discharged claimant for violation of its workplace violence policy. After the interaction with claimant, Martin pursued a restraining order, which has not been resolved as of the date of this hearing.

REASONING AND CONCLUSIONS OF LAW:

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

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 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). 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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, but 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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application

of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The decision in this case rests, at least in part, on the credibility of the witnesses. 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, 394–95 (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, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events. The employer alleged that claimant threatened Martin by saying he would "force [him] to pull out [his] gun." However, the employer did not produce a witness with firsthand knowledge of the interaction between claimant and Martin. Claimant's allegation is more credible than the employer's. Though he perhaps should not have brought up Martin's gun at all during conversation, the allegation that he told Martin the gun did not intimidate him is more logical than the statement the employer alleges claimant made.

The employer has not carried its burden of establishing that claimant willfully violated a known policy such that he engaged in disqualifying misconduct. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The September 30, 2021, (reference 04) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

January 18, 2022
Decision Dated and Mailed

ar/kmj