

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATEO H LUGO
Claimant

HICKMAN AUCTIONS INC
Employer

APPEAL 21A-UI-08470-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/03/21
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 16, 2021 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on August 9, 2021. The claimant, Mateo Lugo, participated personally. The employer, Hickman Auctions Inc., participated through Rick Hickman, Kristen Hickman and Sherri Daniels. The employer was represented by attorney, Luke Craven. Employer's Exhibits 1, 2 and 3 were admitted into the record.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?
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 general maintenance worker beginning April 30, 2020. Claimant was employed until November 2020 when he was discharged from employment. Claimant's immediate supervisor was Irene Adkisson and Rick Hickman.

The claimant was hired as a temporary full-time employee. The employer is an apartment building/property owner. In late July and early August 2020, tenants were informed they were being required to vacate the premises by October 1, 2020 due to a building renovation project. Mr. Lugo lived and worked on the employer's property. At the time Mr. Lugo was hired, he was put on notice that he would be required to vacate the premises leading up to the scheduled building renovation. Tenants were given financial assistance in obtaining moving and obtaining new housing. Mr. Lugo was expected to vacate the premises along with all the other tenants. The claimant did not vacate the premises by the deadline date set out by the employer. As a result, the employer incurred a \$5,000 fine. After several negotiations between the employer and the claimant regarding the claimant's demands to move to a specific hotel where he

wouldn't see other tenants and that had a kitchen to use, the employer agreed to pay the increased cost of claimant's hotel choice. Despite being on notice since his date of hire of the requirement to vacate the premises, the claimant was the last tenant to vacate the premises. The claimant's employment ended when the claimant refused to follow the requirement to vacate the premises.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

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

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).

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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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).

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). 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 that the employer's testimony is more credible than the claimant's testimony.

Insubordination can manifest in several different ways. An employer has the right to expect an employee to follow reasonable directions. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Id.* Misconduct can be found when a claimant was discharged for refusing to complete job tasks after his shift because he created the extra job tasks by working too slow. *Boyd v. Iowa Dept. of Job Serv.*, 377 N.W.2d 1 (Iowa Ct. App. 1985). Continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The refusal of a prison guard to answer questions on his private drug use constitutes job misconduct since the prison's rule requiring him to disclose this information was necessary to the functioning of the prison system. *Ross v. Iowa State Penitentiary*, 376 N.W.2d 642 (Iowa App. 1985). However, if the request was unreasonable or the claimant had a good faith belief or good cause to refuse the request, no misconduct would be found. *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa Ct.App.1982)(an employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause).

An instruction is reasonable if it presents no hardship to the employee and no threat to his or her health, safety, or morals. See *Endicott v. Iowa Dep't of Job Services*, 367 N.W.2d 300, 304 (Iowa App. 1985)(finding misconduct based on employee's unreasonable refusal to work overtime after employer's short-notice request). In this case, the instruction was reasonable given the fact that it presented no hardship to the claimant and no threat to his health, safety or morals. Further, he had been on notice since he first began his employment that he would be required to vacate the premises due to the scheduled building renovation.

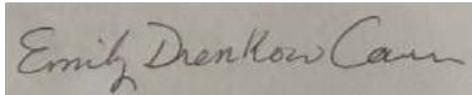
It is also clear that the claimant had no good faith belief or good cause to refuse the request. In *Woods*, the claimant was being subjected to racial harassment. There was no credible evidence presented in this case that claimant was being harassed. Further, this was clearly not a good faith error in judgment. Good faith errors in judgment mean a mistaken action taken with the intent to fulfill the employer's purpose. *Henry*, 391 N.W.2d at 737 (Iowa App. 1986)(reversing denial of benefits because employee in good faith attempted to follow

employer's conflicting rules but had misinterpreted their meaning). That was not the case here. There was no mistake, misunderstanding or misinterpretation involved when claimant intentionally refused to vacate the premises when instructed to do so by his employer and landlord. Claimant was fully aware that he was required to move from the building he lived in at the time he was hired.

Claimant deliberately failed to follow his supervisor's instructions to vacate the premises of the apartment building by October 1, 2020. This is clearly a deliberate act that constituted a material breach of his duties and obligations that arose out of his contract of employment. Accordingly, the employer has proven claimant committed job-related misconduct. As such, benefits are denied.

DECISION:

The March 16, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his separation date, and provided he is otherwise eligible.



Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

August 12, 2021
Decision Dated and Mailed

ed/scn