

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

BENJAMIN W KREIMEYER
Claimant

APPEAL NO: 20A-UI-07859-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CURRAN PLUMBING INC
Employer

OC: 04/12/20
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 6, 2020, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 17, 2020. The claimant participated in the hearing. Rod Curran, Owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time plumber for Curran Plumbing from September 30, 2019 to April 14, 2020. He was not recalled to work and was discharged after the employer learned of things about him from other employees.

At the time the claimant was hired he was going into a half-way house due to a domestic abuse conviction. The employer was aware he was in the half-way house but did not know the reason. The employer cut the claimant's pay from \$20.00 per hour to \$16.00 per hour January 15, 2020, due to the quality of his work. The employer then laid off the claimant due to a lack of work and cut his other two plumbers' hours to 20-24 hours per week. Shortly after that date, other employees told the employer when they went into homes where the claimant previously worked by himself several tasks had to be redone (no dates provided).

Before the layoff, the employer received a call from a motorist that one of his vans tried to run him off the road in Cedar Falls (no date provided). The employer determined it was the van the claimant was driving and that he was supposed to be in Waterloo at that time. The employer called the claimant and was told he was at Wal-Mart in Cedar Falls doing an errand for his wife. The claimant testified he was on his lunch break.

The employer allowed the claimant to use a company truck to get back and forth to work from the half-way house. Other employees saw him out in the truck at night. The claimant stated he used the truck to go to his house because he did not have to return to the half-way house until 10:00 p.m.

The employer learned (no date provided) the claimant was incarcerated from February 17 to April 13, 2020, due to a probation violation and because of that he did not want the claimant going to his customer's homes alone and the shop was too small to send another employee with him.

When the employer recalled the other two plumbers back to work full-time following the layoff, he did not allow the claimant to return.

REASONING AND CONCLUSIONS OF LAW:

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

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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

Iowa Admin. Code r. 871-24.32(8) provides:

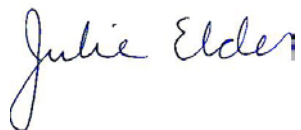
(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer did not learn of most of these incidents until well after they occurred and after the claimant was laid off. In the case of the employer receiving a complaint from the public about the claimant's driving in Cedar Falls when he was supposed to be working in Waterloo the employer could not provide a date of when the incident happened. With the exception of the incarceration, none of the situations he cited were current acts of misconduct. While the claimant was incarcerated, he did not miss any work because he was laid off and his time in jail was not work-related. The employer's concern about allowing the claimant to enter customer's homes is understandable but he allowed him to go to client's homes alone when he knew the claimant was residing in a half-way house without knowing the circumstances of that situation.

Under these circumstances, the administrative law judge must conclude the claimant's actions were not current acts of misconduct and the incarceration does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The July 6, 2020, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

August 25, 2020
Decision Dated and Mailed

je/scn