

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MITCHELL D. BOAL
Claimant

**DIA APPEAL NO. 21IWDUI2102
IWD APPEAL NO. 21A-UI-07559**

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT of CORRECTIONS/Fort Madison
Employer

**OC: 01/03/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant/Appellant Mitchell D. Boal filed an appeal from the March 8, 2021 (reference 01) unemployment insurance decision that denied benefits based upon Claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on May 7, 2021 before Administrative Law Judge Barbara Tapscott. Claimant Boal appeared, represented himself, and testified. No one appeared for Employer, the Iowa Department of Corrections/Fort Madison. The Administrative Law Judge took administrative notice of the March 8, 2021 denial decision, the factfinding documents, and the Claimant's appeal. The Claimant's appeal was comprised of 6 handwritten pages, with attached five documents; 1) 4/3/2019 Summary of Complaint; 2) 3/27/2019 photo of Claimant's home; 3) 4/9/2019 memo closing investigation; 4) 5/30/2019 email from Associate Warden Fedler; and 5) 10/6/2020 Summary of Complaint.

ISSUES:

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 Mitchell D. Boal began working on October 1, 1999, as a correctional officer for Employer Iowa Department of Corrections at its Fort Madison prison. He worked full-time. As of October 2019, he worked the 6 a.m. to 2 p.m. shift.

The Claimant reported to work for his normal shift on October 6, 2019. At about 11 a.m., he was told to report to the shift captain's office because he was being placed "under investigation." He ultimately met with Security Director Doug Bolton. They talked for about an hour, and then he was told to "go home and think about it," which he took to mean think about the investigation and

potential discipline. The Claimant was given a "Summary of Complaint" dated October 6, 2020 (Appellant Ex. 5) stating in pertinent part: "On Tuesday, September 1, 2020, you are alleged to have utilized 0.42 hours of unauthorized leave. This investigation is an inquiry in to that complaint to determine if there is any validity or evidence to substantiate the aforementioned allegation against you."

The Claimant explained at hearing that on September 1, 2020, he was late to work for several minutes – he thought three minutes. When an employee is late, the amount of time they are late is considered "unauthorized leave." Time is calculated as leave in tenths of a minute.

The Claimant admitted at hearing that he had been late to work before the September 1, 2020 incident. He believes he may have been late two of three times between the spring of 2019 and September of 2020. He was disciplined for two of those times, and once served a 3-day suspension. He could not recall when the suspension occurred.

On October 7, 2020, the Claimant received a call at about 8:35 a.m. from Shift Captains Martinez and Riles telling him to report to work the next day, October 8, as scheduled. He agreed he would come in. About an hour later, at 9:40 a.m., the Claimant received a telephone call from Warden Randy Gibbs. The Warden told the Claimant that he was not going to be allowed to return to work and that they were "separating employment" with him. When the Claimant told the Warden that he had just been told by Shift Captains Martinez and Gibbs to return to work on October 8, the Warden repeated that "they were separating employment with me." When the Claimant asked if they were terminating him, the Warden replied to the effect, "consider me accepting your resignation." The Claimant testified that the Warden then stated that he had a pandemic to deal with, and told the Claimant "to have a nice day." Then he ended the call.

The Claimant insists that he did not voluntarily terminate his employment with the Iowa Department of Corrections. He had worked for them almost 22 years and wanted to continue working. He believes that correctional officials wanted him to quit. He contends "they were after him" since the spring of 2019. He faced a complaint dated April 3, 2019, that he took two days off work, March 24 and 25 and gave shift captains misleading or false information about why he needed the time off. The Claimant contends he took time off because of flooding around his home. He produced a copy of an email from Associate Warden John Fedler dated May 30 noting that some staff may not be able to get to work because of flooding. The Claimant produced a 4/9/2019 memo reflecting that the investigation of his March 24 and 25 "call ins" was subsequently completed, and no further action was taken.

After his employment with the Corrections Department ended, the Claimant began the end of November/early December for an excavation company. He was laid off from that job shortly before January 1, 2021. He filed for unemployment on January 3, 2021.

Iowa Workforce Development issued a decision on March 8, 2021 denying the Claimant's unemployment application. The decision stated in pertinent part: "You are not eligible to receive unemployment insurance benefits. The Employer's Account will not be charged. Our records indicate that you left your employment voluntarily on 10/6/20. You have failed to produce evidence showing that you had good cause for voluntarily leaving your employment."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged from employment for a disqualifying reason. Benefits are allowed.

First of all, the administrative law judge finds there is no evidence that Claimant Mitchell D. Boal voluntarily quit his employment. The Claimant denies he quit. There is no written evidence in the record that he voluntarily quit, and no one appeared for the Employer to testify as such. The evidence in the record, rather indicates that the Claimant was terminated for misconduct. Thus the question on appeal is whether the Claimant's purported misconduct warrants a denial of unemployment benefits.

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) provides, in relevant part:

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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa App. 1990). 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 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 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 App. 1984). The focus is on deliberate, intentional, or

culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* In contrast, 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. *Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa App. 1988).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

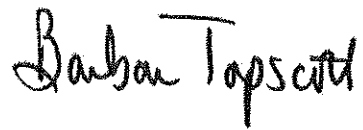
In order to show misconduct due to absenteeism, the employer must establish the claimant had excessive absences that were unexcused. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper, supra*; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa App. 2007).

In this case -- although the evidence in the record reflects the Claimant was put under investigation on October 6, 2020 for being late to work by a few minutes on September 1, 2020 -- there is no evidence as to the conclusion of that investigation. Similarly, although the Claimant admitted at hearing that he had been late a few times from the Spring of 2019 through fall of 2020, there is nothing in the record from the Employer establishing such tardiness rose to the level of violation of an employer policy, and/or was "excessive."

For the reasons detailed above, the Employer has not carried its burden of proving that claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2).

DECISION:

The March 8, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was not discharged from employment for any disqualifying reason. Benefits are allowed, provided Claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Barbara Tapscott, Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division

05-10-21

Decision Dated and Mailed

BMT/aa

CC: Mitchell D. Boal, Claimant (first class mail)
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