

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLY J STILL
Claimant

KNAPP PROPERTIES LC
Employer

APPEAL 21A-UI-24078-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/29/20
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Knapp Properties, L.C., the employer/appellant, filed an appeal from the October 19, 2021, (reference 03) unemployment insurance decision that denied benefits for a non-disqualifying discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on December 20, 2021. Mr. Still participated and testified. The employer participated through Leslie Dooley, director of multi-family properties, and Karel Clark, Equifax hearing representative. The administrative law judge took official notice of the administrative record.

ISSUE:

Was Mr. Still discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Still began working for the employer on March 15, 2001. He worked as a full-time maintenance technician. He worked exclusively at one homeowner's association (HOA), which was a customer of the employer. His employment ended on August 26, 2021.

The employer has an unwritten rule that employees must follow the rules of the properties at which they work. The employer verbally told Mr. Still about this unwritten rule. Mr. Still admitted the employer told him about this unwritten rule.

At some point, the HOA board president at the property at which Mr. Still worked asked him if he had been vaccinated. Mr. Still responded that he had received the flu vaccine, but he had not received the COVID-19 vaccine. The HOA board president told Mr. Still that the HOA board may require him to receive the COVID-19 vaccine. Mr. Still responded that requiring him to receive the COVID-19 vaccine may be illegal. Mr. Still also told residents of the building that he had not received the COVID-19 vaccine.

The HOA board president told the employer that the HOA board required all persons working at their property to be fully vaccinated against COVID-19. The HOA board president told the employer that the HOA board president told Mr. Still that he must be fully vaccinated to work at the property. The HOA board president told the employer that Mr. Still told the HOA board president that he was vaccinated against COVID-19, but he told residents of the building that he was not vaccinated against COVID-19. The HOA board president also told the employer that Mr. Still refused to provide proof of his COVID-19 vaccination, and that he was not meeting the HOA board's work expectations. The HOA board president did not testify in the hearing.

The employer took the HOA board president at their word and did not ask Mr. Still about the matter. On August 26, 2021, the employer terminated Mr. Still's employment, effective immediately, for not following its unwritten rule that he must follow the HOA board's rules, and for not meeting the HOA board's work expectations. The employer did not require its employees to receive the COVID-19 vaccine. Neither the employer nor the HOA board ever told Mr. Still before the employer ended his job that he was not meeting work expectations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Still 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.

871 IAC 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 Department of Job Service*, 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.

In this case, the employer has failed to establish that Mr. Still engaged in disqualifying, job-related misconduct. The employer has not established that the HOA board had a COVID-19 vaccine requirement. The employer testified about what the HOA board president told the employer, without calling the HOA board president to provide first-hand testimony. Mr. Still, on the other hand, testified from his direct knowledge of his and the HOA board president's conversations. The employer has also failed to establish that Mr. Still's alleged failure in job performance was misconduct. Since the employer has failed to meet its burden, benefits are allowed.

To be clear, this decision is not a condemnation of the employer's rights or obligations to follow federal, state, and/or local public health guidance and take reasonable steps to protect its staff and customers from the ongoing, global COVID-19 pandemic. Nor it is a condemnation of the HOA board's rights or obligations to follow federal, state, and/or local public health guidance and take reasonable steps to protect its staff and residents from the ongoing, global COVID-19 pandemic. This decision is also not an endorsement of Mr. Still not being vaccinated against the COVID-19 vaccine. This decision simply holds that the employer did not meet its burden of proof to establish disqualifying, job-related misconduct under Iowa law on the part of Mr. Still.

DECISION:

The October 19, 2021, (reference 03) unemployment insurance decision is reversed. Mr. Still was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
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January 21, 2022
Decision Dated and Mailed

dz/kmj