

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN T STONEBURNER
Claimant

PROBUILD COMPANY LLC
Employer

APPEAL 19A-UI-00130-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/14/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 28, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 31, 2019. Claimant participated personally and was represented by attorney Sara M Baumgartner. Employer participated through general manager Chuck Graham and human resource manager Kris Falder.

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 began working for employer on November 29, 2016. Claimant last worked as a full-time yard worker. Claimant was separated from employment on December 7, 2018, when he was terminated.

Employer has a policy requiring employees to demonstrate courtesy and respect for managers and co-workers and prohibiting loud, offensive, excessively argumentative, or aggressive language, which may include profanity, when addressing members of the management or other employees. Claimant was aware of the policies.

On November 13, 2018, claimant injured his right arm at work. Claimant filed a claim for workers' compensation benefits. A doctor issued claimant lifting restrictions on his right arm. As a result of the injury, the doctor claimant was seeing prescribed him muscle relaxers. Claimant made his general manager, Chuck Graham, aware he was taking muscle relaxers.

On December 5, 2018, operations manager John Rice directed claimant to drive a forklift to perform a job duty. Claimant stated he was not supposed to perform that job duty because he was taking muscle relaxers. Rice said, "Well, we're shorthanded right now." Claimant felt pressured and ultimately got on the forklift and began performing the work.

Claimant had to get off of the forklift at one point to move a mess his co-worker left. Claimant was frustrated with his co-worker. When claimant dismounted the forklift a clipboard fell to the floor. Claimant slid the clipboard back onto the forklift and it hit a piece of metal. Claimant slammed the door of the cab on the forklift. Claimant slammed cardboard into a nearby garbage can. Claimant was using profanity. Graham walked into the work area and witnessed the event. Graham asked, "What is your problem?" Claimant complained that he was on light duty, but was being required to clean up his co-worker's mess. Claimant stated in a raised voice, "This is fucking bullshit!" Graham was also speaking in a raised voice as the work area is loud. Graham told claimant he needed to "fucking go home for the day!"

On December 7, 2018, Graham and Rice met with claimant. They asked claimant if he had anything he would like to say about what happened on December 5, 2018. Claimant said nothing and was dismissive of what occurred. They asked if claimant had anything he would like to discuss. Claimant said nothing. Claimant sat in the meeting with a smirk on his face. Graham determined claimant's attitude would not improve and terminated his employment.

On February 1, 2017, employer gave claimant a written warning stating he must be respectful, perform tasks on time without confrontation, and improve his attitude.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant was terminated after exhibiting an aggressive demeanor and poor attitude in the workplace after having been warned. While claimant did have valid concerns about driving the forklift, he ultimately decided to drive the forklift instead of respectfully declining to do so. He *then* had an outburst based on his frustration with his co-worker about failing to clean up after himself. Even if his outburst was based in part on being asked to drive the forklift, claimant failed to handle the issue in a professional and respectful manner. It was not that claimant resisted driving the forklift—it was *how* he did it. And again, on December 7, 2018, claimant could have used the meeting as an opportunity to explain his point of view, but chose not to do so. Claimant had previously been disciplined regarding similar conduct. Claimant either knew or should have known his conduct could result in termination.

Employer established it terminated claimant for job-related misconduct.

DECISION:

The December 28, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn