

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSE HEIDEMANN
Claimant

DAVE WRIGHT NISSAN SUBARU INC
Employer

APPEAL 20A-UI-07351-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant Jesse Heidemann filed an appeal from a June 23, 2020 (reference 01) unemployment insurance decision that denied benefits based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on August 6, 2020. Heidemann appeared and testified. Dave Wright and Tyler Wright appeared and testified on behalf of the employer, Dave Wright Nissan Subaru Inc. (“the Dealership”). I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the Claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Heidemann commenced full-time employment as a service advisor for the Dealership on September 17, 2018. Chad Dobbins was Heidemann’s immediate supervisor. Dave Wright is the owner of the dealership and his son, Tyler Wright, is the Director of Operations.

The Dealership required Heidemann to obtain prior approval from the factory/m manufacturer for warranty work on all vehicles before he told the technicians to perform warranty work. If the Dealership failed to obtain prior approval from the factory/m manufacturer, the factory/m manufacturer would refuse to pay for the work. Heidemann entered an approval code from the factory on the repair order. The technicians do not receive a copy of the repair orders.

On March 30, 2020, Dobbins and Tyler Wright learned Heidemann had not obtained prior approval from the factory/m manufacturer for warranty work performed on a vehicle. The Dealership learned of the problem when the factory/m manufacturer rejected the claim. Dave Wright testified the factory/m manufacturer rejected the claim with an error code that the Dealership had not obtained prior approval before performing the warranty work.

Dave Wright testified Dobbins told him he asked Heidemann on two occasions whether he had obtained prior approval from the factory/m manufacturer before the technician performed the

warranty work on the vehicle that lead to his discharge. Dave Wright reported Dobbins stated Heidemann told Dobbins he had obtained prior approval on both occasions. Dobbins and Tyler Wright determined Heidemann should be terminated because he had not obtained prior approval from the factory/manufacturer for warranty work and he lied about it on multiple occasions.

Dobbins and Tyler Wright called Heidemann into an office and terminated his employment on March 30, 2020. Tyler Wright testified he spoke to Heidemann about the incident and he told Heidemann he was terminating his employment because the Dealership could not afford to keep having the lies and mistakes and that they would need to part ways. Heidemann did not admit or deny whether he had failed to obtain prior approval from the factory/manufacturer at the time of his termination. Heidemann asked for another job at the Dealership and Tyler Wright told him the Dealership wanted to part ways with him.

Heidemann denied he told Dobbins he had prior approval for the repair from the factory/manufacturer. Heidemann admitted on cross-examination the vehicle was out-of-warranty, and he needed to call Nissan to obtain prior authorization for the repair. Heidemann admitted he did not obtain prior authorization from Nissan for the repair. He also admitted the car left the Dealership with the Dealership receiving payment for the repair. Dave Wright testified the Dealership lost several thousand dollars with this repair.

Tyler Wright testified he talked to Heidemann on at least one other occasion when Heidemann failed to obtain prior approval from the factory/manufacturer before having a technician perform warranty work. Tyler Wright told Heidemann his errors could not continue and that he needed to do his work correctly. Tyler Wright reported Heidemann told him he would fix the problem and that it would never happen again.

Dave Wright testified Heidemann had been counseled by management on numerous times about errors and missing information in over 400 repair orders dating back to 2019. Dave Wright reported he had counseled Heidemann himself on one occasion about not obtaining prior approval from the factory/manufacturer before having a technician perform warranty work on a vehicle. Dave Wright testified during his discussion with Heidemann about not obtaining prior approval he told Heidemann if his performance did not improve, he would be terminated. Dave Wright reported he confronted Heidemann about being dishonest before and Heidemann never admitted he had been dishonest, but he would not respond when he confronted him. Dave Wright testified Heidemann's errors on 122 repair orders they cannot locate cost the Dealership \$123,000.

REASONING AND CONCLUSIONS OF LAW:

Under Iowa Code section 96.5(2)a,

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.

871 Iowa Administrative Code 24.31(1)a, defines the term "misconduct" 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 Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

And 871 Iowa Administrative Code 24.32(8) provides:

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 bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982) The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984)

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, 808 (Iowa Ct. App. 1984) The definition of misconduct in the administrative rule focuses 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.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986) Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (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, 666-69 (Iowa

2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988) Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986)

At hearing, Heidemann testified that he knew he needed to obtain prior approval from the factory/manufacturer before having a technician perform warranty work on a vehicle. Dave Wright and Tyler Wright counseled Heidemann on several occasions that he needed to obtain prior approval from the factory/manufacturer before having a technician perform warranty work on a vehicle. Dave Wright warned Heidemann his work needed to improve or he would be terminated. The last straw occurred on March 30, 2020, when Tyler Wright and Dobbins learned Heidemann had not obtained prior approval from the factory/manufacturer for warranty work on a vehicle. The repair cost the Dealership several thousand dollars because Heidemann had not obtained prior approval and he let the vehicle leave the Dealership without receiving payment. Dobbins informed Dave and Tyler Wright he had asked Heidemann whether he obtained prior approval from the factory/manufacturer on two occasions and Heidemann said he had, when he had not. Dobbins and Tyler Wright determined they needed to terminate Heidemann because of the continued errors and lying. Heidemann denied that he lied to Dobbins. I do not find his testimony reasonable and consistent with the other evidence I believe. During the hearing I assessed the credibility of the witnesses by considering whether their testimony was reasonable and consistent with other evidence I believe, whether they had made inconsistent statements, their "appearance, conduct, memory and knowledge of the facts," and their interest in the case. *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). While Dave and Tyler Wright have an interest in this case given they own and work for the dealership, they both answered my questions directly and appropriately. Heidemann has an interest in obtaining benefits in this case. He did not answer many questions directly. I had to direct him to answer yes or no to questions. Heidemann was evasive when answering questions. I did not find him to be a credible witness.

Dave and Tyler Wright counseled Heidemann before the incident that lead to his termination and told him he needed to obtain prior approval from the factory/manufacturer before having the technician perform warranty work. Heidemann was aware he needed to obtain prior approval from the factory/manufacturer before having a technician perform warranty work. Tyler Wright told him he could not keep doing this. Dave Wright told Heidemann if his performance did not improve when counseling Heidemann about obtaining prior approval from the factory/manufacturer, the Dealership would terminated his employment. I find the Dealership has established Heidemann engaged in work-connected misconduct under the unemployment insurance laws and benefits are denied.

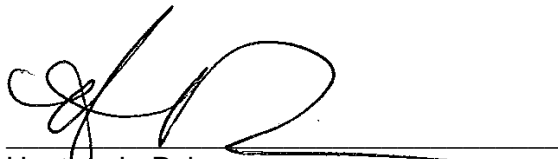
DECISION:

Regular Unemployment Insurance Benefits Under State Law

The June 23, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is affirmed. Claimant was discharged for misconduct for a disqualifying reason. Unemployment insurance benefits are denied until the claimant has worked in and earned wages for insured work equal to ten times the claimant's weekly benefit amount after the claimant's separation date, and provided the claimant is otherwise eligible.

Pandemic Unemployment Assistance ("PUA") Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance ("PUA") that may provide up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive an additional \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation ("FPUC") program if the individual is eligible for PUA benefits for the week claimed. The FPUC additional \$600 payment per week ends as of July 25th in Iowa. This means the \$600 weekly additional benefit will stop and at this time, no extension or change to the program has been made by Congress at this time. This does mean that you will see a corresponding decrease in your weekly benefit amount. The FPUC payments are not a state benefit and Iowa is unable to make any changes to the availability of this benefit. If a change takes place to this benefit in the future, IWD will share on the IWD website and social media. This decision does not address whether the claimant is eligible for PUA. If the claimant wishes to receive PUA benefits, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.



Heather L. Palmer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

August 14, 2020
Decision Dated and Mailed

hlp/mh

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (“PUA”). **You will need to apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.** This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.