

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TEYLOR TRENT
Claimant

T.E.A.M. BUILDERS LTD
Employer

APPEAL 24A-UI-00871-PT-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/17/23
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Teylor Trent, filed an appeal from a decision of a representative dated January 17, 2024, (reference 01) that held claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on February 12, 2024. The claimant participated personally. The employer, T.E.A.M. Builders Ltd., participated through Owner/CEO Austin Maginnis and Superintendent Kent Stackhouse. The administrative law judge took official notice of the administrative record.

ISSUE:

Whether the claimant was discharged for disqualifying, job-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant began working as a full-time custom-build carpenter for T.E.A.M. Builders Ltd on April 17, 2023. The claimant was separated from employment on December 18, 2023, when he was discharged.

As a custom-build carpenter, the claimant traveled to various job sites where he was responsible for helping set up the site and performing carpentry work for interior and exterior home remodeling projects. The employer has an employee manual that contains a gas and timesheet policy. The gas policy allows employees to use a company credit card to purchase gas used to travel to and from job sites. The timesheet policy allows employees to clock-in when they begin driving to a job site, but requires employees to clock-out when they leave the job site. The claimant had access to the employee manual and was generally familiar with the employer's work rules and policies.

During claimant's first seven months of employment, claimant generally performed his job duties well and was a satisfactory employee. In mid-July 2023, the employer met with claimant for his 90-day performance evaluation, wherein the employer mentioned to the claimant to be sure to use the company credit card only for company expenses, but otherwise gave the claimant a positive review. The employer never told the claimant that he had violated any work rules or engaged in any inappropriate behavior.

In mid-November 2023, some personal, family issues arose in the claimant's life that sometimes caused him to be distracted from work. At the hearing, the claimant admitted that in the fall of 2023, he sometimes forgot to clock-out from work at the end of the day, which required him to later go back and correct his timesheets. During a self-assessment in early-December 2023, the claimant admitted that, recently, he felt he had not been performing his job to the best of his ability.

After the claimant's self-assessment, the employer reviewed the claimant's use of the company credit card and determined that the claimant had purchased too much gas with the company card. The employer also asked other employees about the claimant's recent job performance. One employee allegedly recalled that the claimant had fallen asleep on the job at some point. On December 18, 2023, the employer called the claimant into a meeting and informed the claimant that his employment was being terminated effective immediately. During the meeting, the employer did not provide the claimant a specific reason for his termination. Prior to his termination, the claimant had never received any warnings or workplace discipline and he was not aware that his job was in jeopardy.

The employer's witnesses who testified at the hearing explained that the claimant's employment was terminated because he allegedly purchased too much gas with the company credit card, sometimes forgot to clock-out from work, and because the claimant gave himself a poor self-assessment. The employer's witnesses did not provide the dates and times that the claimant allegedly failed to clock out, did not provide any receipts or details concerning the amount of gas claimant allegedly purchased verses what should have been purchased, nor whether the claimant was ever warned that an honest self-assessment could result in discipline. The claimant denied ever purchasing gas with the company credit card for personal reasons and testified that the few times he forgot to clock-out were mistakes and were not intentional.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) *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.

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 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). 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. 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).

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 Ct. App. 1984). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000). A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra; *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant's testimony that he was never told or warned that his conduct was inappropriate and could result in discipline prior to his termination credible. The administrative law judge concludes the claimant did not intentionally violate the employer's work rules and policies.

In this case, the employer discharged the claimant for allegedly using the company credit card for personal reasons, for failing to clock-out after work, and for giving himself a poor self-assessment of his recent work performance. As to the claimant's alleged misuse of the company credit card, at the hearing, the claimant denied ever using the credit card for personal reasons, explaining that he drives a large truck that gets poor gas mileage. While the employer testified that claimant's gas purchases were "excessive," the employer did not provide any records or receipts documenting claimant's purchases nor any details as to the amount of gas that should have been purchased versus what the claimant actually purchased. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. Iowa Admin. Code r. 871-24.32(4). Absent a more detailed account of claimant's alleged misconduct or any evidence corroborating the employer's allegations, the administrative law judge concludes the employer has not met the burden of proof to establish claimant committed the alleged misconduct.

As to claimant's alleged failure to clock-out from work, while this may have violated the employer's policy, there is no evidence that claimant willfully or wantonly disregarded the employer's instructions or the standards of behavior the employer had a right to expect of him. Rather, the evidence supports that claimant's mistakes arose from mere inadvertency, inability, or ordinary negligence. While carelessness can result in disqualification, it must be of such degree of recurrence as to demonstrate substantial disregard for the employer's interests. Claimant's conduct in this instance does not meet that standard.

Finally, as to claimant's self-assessment of his recent job performance, the record is absent any evidence demonstrating this conduct violated a work rule. Moreover, inasmuch as the employer had not previously warned claimant that an honest review of his work performance could lead to separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need to be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff

about a policy is not considered a disciplinary warning. As such, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The January 17, 2024, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment on December 18, 2023, for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.

A handwritten signature in cursive script, appearing to read "Patrick B. Thomas".

Patrick B. Thomas
Administrative Law Judge

February 20, 2024
Decision Dated and Mailed

pbt/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.