

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NATHAN M MASSELL**  
Claimant

**APPEAL 19A-UI-04337-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AREA AMBULANCE AUTHORITY**  
Employer

**OC: 04/07/19  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On May 25, 2019, Nathan M. Massell (claimant) filed an appeal from the May 16, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination Area Ambulance Authority (employer) discharged him for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on June 21, 2019 and consolidated with the hearing for appeal 19A-UI-04338-SC-T. The claimant participated personally. The employer participated through Director of Operations Jackie Gillen and Human Resources Associate VP Sheila Schmidt. The employer's Exhibits 1 through 7 were admitted without objection.

**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: The claimant was employed full-time as a Paramedic beginning on June 21, 2004, and was separated from employment on April 12, 2019, when he was discharged. The employer has a policy stating that paramedics are to respond to calls as directed and cannot change the level of urgency. It also provided training in January 2019 to its employees that frequent patients of emergency services were to be treated the same as first-time patients.

On April 9, 2019, the claimant was directed to respond to an emergency call as the patient was having difficulty breathing. The claimant spoke with the dispatcher to inform her that he would be responding to it as a routine call, and not as an emergency, because he knew who the patient was and he was "fucking fine." (Exhibit 1) The claimant had not spoken to or seen the patient prior to making this decision. He had not received information from a first responder indicating emergency treatment was unnecessary. When the claimant arrived, the patient was not in need of emergency medical treatment. However, if the patient had been in respiratory distress, he could have been injured or died due to the delayed response. The claimant was discharged for violating the employer's dispatch policy.

## 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. Benefits are denied.

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).

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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The Iowa Court of Appeals found substantial evidence of misconduct in testimony

that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995).

The employer has an interest in protecting the safety of the public by providing appropriate emergency care. To ensure its interests are protected, it has policies in place to ensure that paramedics follow the level of care dispatched. The claimant changed an emergency call to routine without speaking to or assessing the condition of the patient. While this situation ended up without injury, it was possible that the patient could have been injured or died as a result of the claimant's decision. The claimant deliberately engaged in conduct that was against the employer's best interest which is disqualifying even without prior warning. Benefits are denied.

**DECISION:**

The May 16, 2019, 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.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

src/rvs