

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GUY C JOHNS**  
Claimant

**PACKERS SANITATION SERVICES INC**  
Employer

**APPEAL 19A-UI-03558-SC-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 03/24/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On April 29, 2019, Guy C. Johns (claimant) filed an appeal from the April 19, 2019, reference 02, unemployment insurance decision that denied benefits based upon the determination Packers Sanitation Services, Inc. (employer) discharged him for insubordination. The parties were properly notified about the hearing. A telephone hearing was held on May 20, 2019 and consolidated with the hearing for appeal 19A-UI-03559-SC-T. The claimant participated personally. The employer's witness did not answer when called at the phone number registered and did not participate in the hearing. No exhibits were admitted into the record.

**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 Sanitation Worker beginning on October 5, 2011, and his last day worked was August 22, 2018. The employer has a contract with Tyson to perform sanitation services in its facility. The claimant was assigned to work at the Tyson facility.

In the early morning of August 22, the claimant's supervisor Shane told the crew that Tyson employees were running behind so they had to wait before they could do their overnight sanitation. The claimant and the rest of the crew were waiting in the dining area. The claimant attempted to turn a television on but was unsuccessful. A Tyson employee, with whom the claimant had a prior negative interaction, came over to tell the claimant to leave the televisions alone because they did not work and Maintenance would fix it. The claimant told the Tyson employee that he believed he was harassing him based on their prior interaction. The two argued. Later in the conversation, the claimant told the Tyson employee if he had a problem with him than he needed to tell Shane.

The Tyson employee walked over to Shane. The claimant approached and heard Shane say there should have been a sign on the televisions if they did not work. The Tyson employee then walked away. The claimant attempted to engage Shane in a discussion about the incident with

the Tyson employee. Shane yelled at the claimant that he did not have time to deal with the situation and ordered him to sit down. The claimant argued with Shane that he had a right to talk to him about the situation because Shane had listened to the Tyson employee's side of the argument. Shane and the claimant continued to argue back and forth.

Dan Hacker, a Tyson supervisor, approached the claimant and Hacker. He observed the interaction and directed the claimant to sit down and be quiet. The claimant began to argue with Hacker that he had a right to speak to his supervisor. Hacker informed the claimant that if he did not go sit down and be quiet, then he would need to leave. The claimant refused to follow Hacker's instructions. Hacker directed the claimant to leave or he was going to contact police to report him for trespass. The claimant still did not comply and Hacker contacted law enforcement.

The claimant then left the dining area to go to the lockers to wait for work to start. There, he was approached by Hacker, six officers, and Plant Manager Bill. The officers attempted to get the claimant to leave the facility. The claimant explained he could not leave because then it would be stated that he abandoned his job. Bill intervened and took the claimant's facility badge. The claimant asked if he still had a job with the employer and Bill said yes but not at the Tyson facility. He explained Tyson no longer wanted the claimant on the property but he could continue to work for the employer if he relocated. The claimant argued he could not relocate as it cost money. The officers escorted him from the property. The police report states the charge of criminal trespass was unfounded but the claimant was banned from the Tyson facility.

Two weeks later, the claimant contacted the employer's Human Resources Director to ask about an issue with his vacation pay. He attempted to explain what had happened at the Tyson facility. She said she needed to speak to Bill and would call the claimant back.

The Human Resource Director called the claimant back the following week and explained he would need to relocate to another facility. The claimant did not ask which facility, but became upset because he did not have the resources to relocate and she would not listen to his side of the story regarding the incident at Tyson. During their conversation, she warned the claimant that if he did not stop yelling at her, she was going to disconnect the call. The claimant was still aggravated and continued to argue. She then disconnected the call. The employer discharged the claimant two days later for insubordination.

#### **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 claimant's repeated failure to follow reasonable instructions constitutes disqualifying misconduct. Throughout the last three weeks of his employment, the claimant refused to follow the instructions of Shane, Hacker, and the Human Resources Director. The claimant's refusal to follow instructions of Shane and Hacker resulted in being banned from the Tyson facility. A reasonable employee in the claimant's situation would be on notice that his or her job is in jeopardy. The claimant then refused to follow the Human Resource Director's instructions not to yell at her while on the phone. The claimant's conduct is insubordination and a willful disregard of the reasonable standards of behavior which an employer has the right to expect of an employee. Benefits are denied.

**DECISION:**

The April 19, 2019, reference 02, 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

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