

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DALLAS T MURRAY**  
Claimant

**AMERICLEAN OF IOWA LLC**  
Employer

**APPEAL 15A-UI-13962-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/22/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 10, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 20, 2016. Claimant participated. Attorney Matthew Reilly appeared and participated on behalf of claimant. Employer participated through, attorney Gregory Epping; owner, Chris Wehmeyer; and human resource manager, Carly Wehmeyer.

Employer Exhibit One was admitted into evidence over claimant's objection. Claimant objected to the document as cumulative and hearsay. Claimant's objection was overruled. Employer Exhibit Two was admitted into evidence with no objection. Employer Exhibit Three was admitted into evidence over claimant's objection. Claimant objected to the document because the last sentence on the first page and the last paragraph on the second page were not on the document when presented to claimant on November 9, 2015. Ms. Chris Wehmeyer testified that the document was how it was presented to claimant on November 9, 2015. Ms. Chris Wehmeyer did not recall if a copy was given to claimant. Claimant's objection was overruled. Employer Exhibits Four through Nine were admitted into evidence with no objection. Employer exhibits Ten and Eleven were admitted into evidence over claimant's objection. Claimant objected to the documents because Employer Exhibit Nine states that all previous version were revoked, which would have included Employer Exhibits Ten and Eleven. Ms. Chris Wehmeyer testified that employer exhibits Ten and Eleven were in place when claimant was initially hired. The employee handbook was updated in September 2015. The employees were given the new handbook and signed for the new handbook. Ms. Chris Wehmeyer testified the policies stated in Employer Exhibits Ten and Eleven are the same as in the update handbook. Claimant's objection was overruled.

**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 was employed full-time as a carpet cleaning technician from August 4, 2014, and was separated from employment on November 20, 2015, when he was discharged.

Claimant would clock-in at the employer when he started his shift and then clock-out when he finished his shift. After claimant clocked-out, he would have to manually record any breaks that he took during the day. Claimant would get paid for the entire time he was clocked-in, minus any reported breaks. Claimant was aware he was to report his time accurately and to report his breaks. Claimant was aware it was important to report his breaks.

On November 16, 2015, claimant was scheduled to clean a customer's carpet in the late afternoon/early evening. Claimant arrived at the job site at approximately 5:15 p.m. Employer Exhibits Four and Five. Claimant then proceeded to clean the carpets and left the job site prior to 8:00 p.m. The customer had an employee at the job site that had to lock up after claimant exited the building. This employee reported that claimant left at approximately 6:52 p.m. Claimant reported on his daily report that he had left the job site at 8:00 p.m. Employer Exhibit Five. Claimant stopped to fill-up with gas at 8:28 p.m., prior to returning to the employer on November 16, 2015. Employer Exhibit Six.

On November 9, 2015, claimant spoke to Ms. Carly Wehmeyer over the phone and informed the employer he was stopping to get an accident report. After getting the accident report, claimant then finished his shift and clocked-out. Claimant reported on his timecard no breaks for November 9, 2015. Employer Exhibit Seven. On November 12, 2015, Ms. Carly Wehmeyer questioned claimant about why he reported no breaks on November 9, 2015, and claimant then adjusted his timecard to reflect the 15-minute break when he stopped to get his accident report. Employer Exhibit Seven.

Claimant received a written warning on November 9, 2015 regarding speeding through his jobs. Claimant was not warned on the written warning for failing to properly record his time.

## **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.

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibits submitted. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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).

While the employer did not present its customer's employee from the incident on November 16, 2015 to provide sworn testimony or submit to cross-examination, the combination of the employer's exhibits and Ms. Chris Wehmeyer and Ms. Carly Wehmeyer's testimony, when compared to claimant's recollection of the event, establish the employer's evidence as credible. The employer is entitled to establish reasonable work rules and expect employees to abide by them. Carpet cleaning technicians for the employer, like claimant, are paid from when they clock-in at the start of their shift to when they clock-out at the end of their shift, minus any breaks the employee reports. If the employee does not report any breaks, then they get paid the entire amount. On November 16, 2015, claimant did not accurately report his time. Claimant reported that he left a customer's jobsite at 8:00 p.m. Employer Exhibit Four and Five. Ms. Chris Wehmeyer testified that the customer had an employee at the job site to lockup after claimant finished the job, and the customer reported that claimant left at 6:52 p.m. Clearly claimant did not report his time correctly. Claimant's argument that he was exhausted when he did his timecard and forgot to report a meal break is not persuasive. This was not the first time claimant failed to accurately report his breaks on his timecard. On November 9, 2015, claimant had taken a 15-minute break to attend to personal matters. When claimant reported his time for the day, he reported no breaks for November 9, 2015. Employer Exhibit Seven. It was only after Ms. Carly Wehmeyer pointed out to claimant that he failed to accurately report his break for that day did claimant change his timecard to report his break. Employer Exhibit Seven. Had Ms. Carly Wehmeyer not caught claimant's failure to report his break, claimant presumably would have been paid for this time by the employer.

Claimant's failure on more than one occasion to accurately report his breaks, knowing it is his responsibility to report his breaks so he does not get paid for that time, is clearly against the best interests of the employer. This is misconduct even without prior warning. Benefits are denied.

**DECISION:**

The December 10, 2015, (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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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs