

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KYLE GILL**  
Claimant

**WARREN DISTRIBUTION CO**  
Employer

**APPEAL 19A-UI-06903-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/21/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant, Kyle Gill, filed an appeal from the August 22, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision which denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 24, 2019. The claimant participated personally. The employer, Warren Distribution Inc., participated through Jenny Anderson, senior human resources manager. John Patrick, blending manager, also testified.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibits 1-4 and Claimant Exhibits A-B were admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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 blending supervisor and was separated from employment on July 25, 2019, when he was discharged (Employer Exhibit 1).

The claimant was trained on employer rules and procedures and expected to enforce them amongst the employees he supervised. The employer had specifically counseled the claimant about deficiencies in his management of his team prior to separation (Employer Exhibit 2 and 3). In addition, the claimant had twice received reminders from management to not allow operators to apply a metal fitting to the valve, which could cause spills when operators walked away from the valve, rather than manually monitor (Employer Exhibit 4). The application of the metal fitting was viewed as a “shortcut” (Employer Exhibit 4, Patrick testimony) but could result in serious consequences for the employer, including spills of fluid, which in turn, could result in fines or investigation from the Environmental Protection Agency (EPA).

The final incident occurred on July 24, 2019, when the claimant allowed his operator to apply a metal fitting to a valve that he was holding. The claimant acknowledged he knew it was against policy. He did not stop the operator or physically remove the fitting himself, citing to it being loud and him being busy. As a result, because the valve was not being monitored, it caused a spill of 350 gallons of base oil fluid. He was subsequently discharged.

### **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.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

In this case, the claimant was a supervisor and therefore not only familiar with the employer's policies, but expected to also enforce them amongst subordinates. On July 24, 2019, the claimant watched his subordinate operator apply a metal fitting to the valve that he was holding open, knowing it was against policy. As the supervisor, he was in a position to correct the operator on appropriate procedure or remove the fitting himself. Instead, he walked away and a spill ensued. Spills can have serious consequences for the employers including fines and investigations by the EPA.

In light of the claimant knowing his job was in jeopardy (Employer Exhibits 2, 3) and multiple reminders from the employer about not letting operators apply fittings to valves, (Employer Exhibit 4) the administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning for that specific type of rule violation. Benefits are denied.

**DECISION:**

The August 22, 2019 (reference 01) initial 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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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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