

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ESPOIR BYAMUNGU**

Claimant

**REMEDY INTELLIGENT STAFFING INC**

Employer

**APPEAL 200-UI-01213-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/17/19**

**Claimant: Appellant (2)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Espoir Byamungu (claimant) appealed a representative's November 22, 2019, decision (reference 06) that denied unemployment insurance benefits after a separation from work with Remedy Intelligent Staffing (employer). A hearing was held on the timeliness of appeal on January 2, 2020. This administrative law judge issued a decision on January 2, 2020, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on February 10, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 27, 2020. The claimant participated personally through the aid of Interpreter Maalim, number 12253. The employer participated by Taylor Rodriguez, Senior Staffing Consultant.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from 2017 through October 28, 2019. He signed a document on August 23, 2018, indicating he was to contact the employer within three working days following the completion of an assignment to request placement in a new assignment. The document did indicate the consequences of a failure to notify the employer. The claimant was given a copy of the document.

The claimant worked his last assignment at General Mills from November 16, 2018, to October 28, 2019. During his assignment, the employer did not issue the claimant any written warnings. The employer did not speak with the claimant regarding any concerns. On October 28, 2019, a supervisor approached the claimant and ended his assignment. The supervisor reported that the claimant was terminated for standing with his arms crossed. On October 28, 2019, the claimant sought reassignment but no work was available.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

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). 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 employer did not provide any of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant's and the employer's testimony was not the same. The administrative law judge finds the claimant's testimony to be more credible. The claimant was an eye witness to the events for which the claimant was terminated. The employer did not provide any eye witness testimony or statements to support its case.

**DECISION:**

The representative's November 22, 2019, decision (reference 06) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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