

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DENZEL RODGERS**  
Claimant

**KINSETH HOTEL CORPORATION**  
Employer

**APPEAL 18A-UI-08500-DG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/01/18  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated August 2, 2018, (reference 07) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 29, 2018. Claimant participated personally. Employer participated by Megan Milligan, Hearing Representative. Employer's Exhibits 1-6 were admitted into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 10, 2018. Employer discharged claimant on June 26, 2018, because he refused to follow employer's instructions and for insubordination.

Claimant began working as a housekeeper on May 10, 2018. Claimant began training by observing room cleaning procedures. Claimant was trained by co-workers and his supervisor Teresa Boughey.

During his training, claimant was observed sitting in rooms not working, and spending time on his cell phone. In late May, 2018, claimant brought a small child into the employer's building while he was supposed to be working. Claimant was observed running up and down the halls with the child in his arms. Claimant was told by his trainer that he needed to help finish cleaning, but he refused to help.

On or about June 1, 2018, claimant was observed using his cell phone at work by Ms. Boughey. Ms. Boughey asked claimant to stop using his phone during work hours and to get back to work. Claimant refused to follow her instructions. Ms. Boughey persisted and told claimant he needed to leave the area he was in and get back to his assigned work area. Claimant told Ms. Boughey to "shut up" and he refused to follow her directions. On June 4, 2018, claimant was assigned to

clean a room. Claimant was asked if he changed the bed linens in the room he had cleaned. Claimant told his supervisor that he had changed all the linen. The supervisor had marked the bed, and she was able to tell that the bed had not been changed.

Claimant requested a leave of absence when a family member died which began on or about June 11, 2018. During that time, employer conducted an investigation of claimant's alleged acts of misconduct. Employer concluded that claimant's employment must be terminated for insubordination. On June 26, 2018, claimant was notified that his employment was being terminated immediately.

## **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 Code section 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).

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.

Iowa Admin. Code r. 871-24.32(8) provides:

**(8) Past acts of misconduct.** While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. *Sallis v. EAB*, 437 N.W.2d 895 (Iowa 1989). *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984), held that the absences must be both excessive and unexcused. The Iowa Supreme Court has held that the term “excessive” is more than one. Three incidents of tardiness or absenteeism after a warning has been held to be misconduct. *Clark v. Iowa Department of Job Service*, 317 N.W.2d 517 (Iowa Ct. App. 1982). While three is a reasonable interpretation of “excessive” based on current case law and Webster’s Dictionary, the interpretation is best derived from the facts presented.

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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep’t of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). 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).

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.*

Claimant refused to follow instructions given to him by his supervisor, and by doing so he violated employer’s insubordination policy. Employer did provide sufficient evidence of deliberate conduct in violation of company policy, procedure, or prior warning. Claimant’s conduct does evince such willful or wanton disregard of 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. Benefits are denied.

**DECISION:**

The August 2, 2018, (reference 07) decision is reversed. 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.

---

Duane L. Golden  
Administrative Law Judge

---

Decision Dated and Mailed

dlg/scn