

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**DARREN STOKES**  
Claimant

**APPEAL NO: 16A-UI-13651-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPLE CORPS LP**  
Employer

**OC: 11/27/16**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 16, 2016, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 18, 2017. The claimant participated in the hearing. Troy Essen, General Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time line cook for Appleby's from September 27, 2016 to November 22, 2016. He was discharged following an absence that occurred November 20, 2016.

On November 3, 2016, the claimant was scheduled to work at 4:00 p.m. He has a second part-time job delivering furniture and the truck broke down November 3, 2016. The claimant called the employer and stated he would be late. He arrived at 6:00 p.m. The employer issued the claimant a verbal warning.

On November 12, 2016, the employer issued the claimant a written warning because he was having difficulty with cross contamination of food and with simple recipes. The employer also talked to the claimant about leaving during his shift and told him he needed to improve his overall job performance. The claimant signed the warning.

On November 18, 2016, the employer issued the claimant a written warning for using the wrong tongs after he used the tongs on raw food and then used the same tongs on ready to eat food. The warning stated any further incidents could result in termination of the claimant's employment.

On November 20, 2016, the claimant called the employer in the morning and indicated he would not be present for his shift that afternoon because the work truck for his second job broke down in Chicago.

The employer terminated the claimant's employment November 22, 2016.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant accumulated a verbal warning and two written warnings, the final incident cannot be considered misconduct. The claimant missed his November 20, 2016, shift because the work truck for his second job broke down in Chicago. The claimant was not responsible for maintaining or repairing that truck and that situation was clearly outside of his control. Consequently, his actions do not rise to the level of intentional job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The December 16, 2016, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs