

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**GREGORY CHARLES**  
Claimant

**ANNETT HOLDINGS INC**  
Employer

**APPEAL 21A-UI-14668-ML-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/28/21  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant/appellant filed an appeal from the June 23, 2021, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 11, 2021. Claimant, Gregory Charles, participated and testified. Cory Soulinchadong and Marcel Yanda also testified on Claimant's behalf. The employer participated through Logistics General Manager Marcy Noble and Logistics Sales Manager Peter Sriboonreuang.

Employer's Exhibit A was offered and accepted into the evidentiary record. The undersigned took official notice of the administrative record.

**ISSUE:**

Was Mr. Charles 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 logistics sales representative (LSR). Claimant was employed from August 19, 2019, to March 30, 2021. Peter Sriboonreuang was claimant's immediate supervisor.

The employer requires its LSRs to meet or exceed a monthly revenue and margin goal.

On February 4, 2021, Marcy Noble and Peter Sriboonreuang met with claimant to discuss an independent development plan. The three main items of discussion were his daily call volume, increasing his leads, and communicating his pipeline activity via reports. A copy of the IDP was provided to claimant on February 5, 2021. Claimant refused to sign the IDP.

Claimant's biggest customer from 2020 relied heavily on Asset's availability and, in 2021, Asset had more of its own committed freight to cover. The IDP was put in place to help Claimant

replace the lost revenue created by this shift in priorities. It appears asset capacity issues were widespread throughout the industry.

On March 8, 2021, claimant was issued a disciplinary action that essentially placed him on probation. Claimant had not been meeting the productivity expectations outlined in his IDP. As an example, claimant was expected to make an average of 40 calls per day. In the month of February, 2021, claimant made an average of 12 calls per day. The ideal number of leads generated in a month is 200; claimant had 129. Claimant submitted 2 of a possible 4 sales reports, and 1 of a possible 4 focus account reports. The discipline form noted that failure to improve could result in further disciplinary action up to or including termination.

On March 11, 2021, Ms. Noble and Mr. Sriboonreuang met to discuss an e-mail they received from one of claimant's co-workers. According to the co-worker, claimant was constantly having non-work-related side conversations with other employees. He also mentioned seeing Claimant on his phone or Facebook, often. Although this e-mail factored into the employer's decision to terminate claimant, there is no evidence that this complaint was ever addressed with claimant, or that claimant was provided a warning regarding the same. Claimant testified that he first heard of the complaint on the date of hearing.

Mr. Sriboonreuang and claimant met on or about March 12, 2021 to review claimant's performance evaluation for March, 2021. Claimant had improved on his lead total when compared to his February, 2021, numbers. The two also discussed a list of potential leads from recently terminated LSRs. Claimant chose 15 leads to contact from said list. Lastly, the two discussed the widespread capacity issues, and why they were losing long-haul drivers.

On March 30, 2021, claimant was discharged from employment by Marcy Noble and Peter Sriboonreuang for his conduct and failing to meet performance expectations.

There is evidence that claimant had previously met the employer's productivity requirements. In 2020, claimant ended up at 95% to his revenue goal and 96% to his margin goal. At hearing, claimant acknowledged that his numbers were slipping in 2021. Claimant testified that he was doing his best. He further provided that he had freight, but the freight wasn't moving. Claimant testified to a nationwide shortage in trucks. Claimant testified he was not surprised by the employer's decision to terminate his employment.

It is worth noting claimant sustained an injury in October, 2020, that kept him home from work until approximately December 21, 2020. Claimant worked remotely during this time. According to claimant's "2020 Scorecard," his numbers started to slip shortly after he started working from home. In October, 2020, Claimant had 59 Non-Asset Loads and 19 Asset Loads. In November, Claimant only had 1 Non-Asset Load and 5 Asset Loads. In December, Claimant had zero Non-Asset Loads and 1 Asset Load. In January, 2021, Claimant had 3 Non-Asset Loads and 8 Asset Loads. In February, Claimant had 7 Non-Asset Loads and 7 Asset Loads. In terms of "Goal Attainment %" between October 2020 and February 2021, claimant's number were 129%, 11%, 3%, 15%, and 24%. Again, while minimal, claimant was showing improvement between December 2020 and February 2021.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon*, 275 N.W.2d at 448. Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to

justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

The employer provided testimony that claimant had performed his job duties to the employer's satisfaction for a sustained period of time prior to 2021. Employer's exhibits demonstrate that claimant met its performance expectations throughout 2020. That being said, there is still a question of whether claimant's poor work performance was intentional.

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). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000).

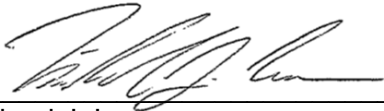
In this case, the employer terminated claimant within two months of providing him with an IDP, and less than one month after a written warning. There is evidence, albeit minimal, that claimant's performance metrics were improving; however, the improvements did not meet the employer's expectations. There is no evidence that claimant's slipping numbers were intentional. In fact, claimant was also disappointed and discussed his frustrations with his slipping numbers and lack of trucks available for his largest client. Inasmuch as claimant did attempt to perform the job to the best of his ability but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

With respect to the alleged disruptive activity in the workplace, there is no evidence claimant was ever approached regarding the same. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the secondary issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

The employer has not carried its burden of establishing that claimant engaged in disqualifying misconduct. There was no evidence presented to indicate that claimant willfully violated one of the employer's policies or engaged in conduct that, even without warning, would constitute disqualifying misconduct. Additionally, the claimant received no warnings prior to his discharge indicating that continued conduct of some kind would result in his termination. No disqualification is imposed, and benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The June 23, 2021, (reference 02) unemployment insurance decision is REVERSED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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Michael J. Lunn  
Administrative Law Judge  
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1000 East Grand Avenue  
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Fax (515)478-3528

August 26, 2021

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Decision Dated and Mailed

mjl/kmj