

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**JOHN T PHILLIPS**  
Claimant

**SECURITAS SECURITY SERVICES USA**  
Employer

**APPEAL NO. 19A-UI-00625-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/25/18  
Claimant: Appellant (1)**

---

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated January 15, 2019, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 5, 2019. Claimant participated personally. Employer participated by hearing representative Amanda Lange and witness Meg Roth-Roffy. Employer's Exhibits 1-6 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for 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 July 28, 2018. Employer discharged claimant on August 14, 2018 because claimant was alleged to have engaged in inappropriate discussions with employees of the client where claimant was working as a security officer.

Claimant began working as a security officer for employer on July 3, 2018. At the time of hire, he received an employee handbook which detailed, amongst other things, actions that warrant immediate termination. Paragraph 21 states, "Participating in any relationship or activity that creates a conflict or potential conflict of interest, discord, or other distractions that interfere with the productivity of the workplace."

On July 28, 2018, employer received an email from a manager at the Dillard's where claimant was placed. Said email mentioned that claimant had been accused by seven female associates of comments he'd made to them. This included, but was not limited to, a comment saying people would pay \$20,000.00 for an associate in her outfit, asking another associate if she'd be impressed if her boyfriend were a drug dealer, and commented about the way multiple associates were dressed.

Employer called claimant in to talk about the allegations. Claimant wrote out a three-page statement wherein he attempted to explain the occurrences. Generally, claimant stated that he

had conversations with employees while at all times acting in a professional, but friendly manner.

Employer did not warn claimant prior to his termination.

**REASONING AND CONCLUSIONS OF LAW:**

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.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

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 Ct. 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. *State v. Holtz*, 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. *State v. Holtz*, Id. Here, claimant's written testimony differed from the testimony given at the hearing. At the hearing, claimant stated that his \$20,000.00 statement was made outside of work time. Claimant's written testimony stated that he made the statement before the employee clocked out from work. In no way was the statement outside of work when made before an employee clocked out.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning improper communication with employees. The last incident, which brought about the discharge, constitutes misconduct because claimant made repeated inappropriate comments to multiple employees. This caused employees at the business where claimant was hired to protect to be uncomfortable in his presence. Not only was claimant not focused on the job at hand when talking to these employees, his discussions were very inappropriate. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated January 15, 2019, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

---

Blair A. Bennett  
Administrative Law Judge

---

Decision Dated and Mailed

bab/scn