

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JAMES Z CAMPBELL**  
Claimant

**MSH HEALTH SERVICES LLC**  
Employer

**APPEAL 21A-UI-25291-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/24/21  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant, James Z. Campbell, filed an appeal from the November 1, 2021 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 7, 2022. The claimant participated. The employer/respondent, MSH Health Services LLC., participated through Brent Olsavsky, CEO. No testimony was taken.

The hearing was continued to February 7, 2022, to allow parties to exchange exhibits. The claimant participated personally. The employer participated through Brent Olsavsky, CEO. Claimant Exhibits 1-3 and Employer Exhibits A-C were admitted into evidence. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer serves a staffing liaison between travelling medical professionals and health care providers. Claimant began employment July 19, 2019 and worked on assignment as a full-time CNA with “McCreedy” until April 6, 2020, when claimant was removed from the assignment at the client’s request. Claimant had been removed in part due to attendance issues. Even though claimant was removed from the assignment, he remained eligible for future assignments. Claimant acknowledged at the hearing for being responsible for the attendance issues which led to his assignment ending.

Claimant and his spouse then decided to move back home to be near family. Home was located in Ohio, and claimant and his spouse both worked for the employer, using their 5<sup>th</sup>

wheel camper for lodging. Claimant and his spouse helped care for a family member until claimant signed an offer to work at "Bridgeport" effective January 24, 2021. Claimant signed the offer of employment on January 15, 2021, and was aware the assignment was located 300 miles away.

Claimant agreed to begin work on January 24, 2021, but notified employer he would not be there that day. At that point, claimant had not yet drove to the new assignment to set up his camper. Employer pushed claimant's start at the new assignment to January 26, 2021 and claimant had still not begun the drive/ set up, in light of winter weather conditions. Employer notified claimant that he must be at the assignment on January 27, 2021 at 10:00 a.m. Claimant took no steps to be at the assignment, and remained home. Claimant cited to weather, needing to set up their camp, and claimant's spouse's grandmother as the reasons for why he did not go to the assignment. Based upon employer previously having attendance issues and claimant's conduct January 24-27, 2021, which employer interpreted as manipulative, claimant was discharged.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

Iowa unemployment insurance law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

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 related 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). 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

Claimant in this case had been previously removed from his last assignment due to attendance issues. Employer retained claimant's employment, and attempted to reassign claimant to a new assignment effective January 24, 2021. Claimant agreed to the assignment on January 15, 2021, and knew of the distance, as well as possible winter weather. Claimant had also been caring for his spouse's grandmother for prior months, and aware of her declining health. Claimant's failure to arrive to his start shift was not due to an emergency or unforeseeable circumstances.

Rather, claimant did not show up to work on his assigned start date, and made no good faith effort to be there for the beginning of the assignment. Claimant was given two additional days to arrive to the assignment and did not make efforts to drive to the assignment, set up, etc. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer, and in light of prior assignments ending due to attendance. An employer has the right to expect employees to show up at their agreed upon shift and in this case, claimant had been removed from his last assignment because of poor attendance. Based on the evidence presented, the claimant has not presented sufficient evidence to mitigate its non-compliance with employer's directive to be at the Bridgeport assignment on January 24, 26 or 27, 2021. The employer has met its burden to establish claimant was discharged for disqualifying misconduct. Benefits are denied.

**DECISION:**

The November 1, 2021, reference 03, decision is affirmed. 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.



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February 25, 2022  
Decision Dated and Mailed

jlb/scn

**NOTE TO CLAIMANT:** Individuals who do not qualify for regular unemployment insurance benefits, but who were unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). For information regarding the Pandemic Unemployment Assistance (PUA) program, please contact IWD at 1-866-239-0843 or email: [UIclaimshelp@iwd.iowa.gov](mailto:UIclaimshelp@iwd.iowa.gov). On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>