

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**RICHARD E MUSUMHI**  
Claimant

**APPEAL NO: 20A-UI-01845-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TMONE LLC**  
Employer

**OC: 02/02/20**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 18, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 17, 2020. The claimant participated in the hearing. Ciera Turner, Senior Payroll Administration, 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 full-time agent for TMOne from September 9, 2019 to November 11, 2019. He was discharged for failing to work his scheduled hours.

The claimant attended training and the employer asked whether he preferred working 10:00 a.m. to 7:00 p.m. or 12:00 p.m. to 9:00 p.m. and the claimant chose to work the latter. The employer tries to accommodate employees' preferences but does not guarantee a certain shift or that it will not change. On September 30, 2019, the claimant received a documented verbal warning for job performance because he was not hitting his required sales numbers. Around October 21, 2019, the employer changed the claimant's hours from 12:00 p.m. to 9:00 p.m. to 10:00 a.m. to 7:00 p.m. because he was not meeting his sales goals and the employer felt he could make more sales on the earlier shift and it could monitor his performance more closely. The claimant did not want to work the earlier shift because he lives in Ames and the employer is in Des Moines and he performs trash pickup for his landlord in the mornings. Consequently, he refused to work the 10:00 a.m. shift and continued reporting to work the 12:00 p.m. shift although he usually did not arrive for work until around 1:00 p.m. On October 28, 2019, the claimant received a written warning for failing to work his scheduled shift after he failed to report to work at 10:00 a.m. for one and one-half weeks. On October 29, 2019, he received a written warning for failing to make up his October 28, 2019, hours. The claimant

was upset about the warning and said he had a doctor's appointment and left. He did not provide a doctor's note. On Friday, November 1, 2019, the claimant received a final written warning for failing to make up his hours or reporting to work on time for that week. On Monday, November 4, 2019, the claimant again failed to report for work at 10:00 a.m. and within 30 minutes of his arrival the employer told him to log off and go home. The claimant did not report for his next scheduled shifts November 6, November 7, November 8 and November 11, 2019. The claimant assumed he would be sent home again if he reported for work at 12:00 p.m. instead of 10:00 a.m. and that his employment was terminated so he stopped going to work. The employer believed he quit by failing to call or show up after November 4, 2019.

### **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, 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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment

insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While the claimant requested to work from 12:00 p.m. to 9:00 p.m. the employer never guaranteed him he would always have those hours. The claimant was not meeting his sales goals and the employer felt he would be more successful working the earlier hours of 10:00 a.m. to 7:00 p.m. and that it could monitor him more closely and further assist him. The claimant refused to accept the change in his hours, however, and continued reporting for work at 12:00 p.m. The employer has the right to change the claimant's hours for business needs or if the claimant is not performing satisfactorily. The claimant made no effort to work with the employer on his schedule and instead just continued to report for the 12:00 p.m. shift and was usually at least one hour late for that shift. After issuing the claimant two written warnings and a final written warning regarding his failure to work his scheduled hours the employer sent the claimant home November 4, 2019.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The February 18, 2020, reference 01, 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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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn