

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DUSTIN P HOOVER  
1307 S 25TH ST  
FORT DODGE IA 50501-6230**

**MECHANICO CONCRETE LLC  
WHITNEY LOCKMAN  
2199 235TH ST  
FORT DODGE IA 50501**

**APPEAL 20A-UI-09371-BH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
or  
Fax (515) 281-7191***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**ONLINE RESOURCES:**

UI Appeals: <http://www.iowaworkforce.org/ui/appeals/index.html>

Claimant Handbook: <http://www.iowaworkforce.org/ui/handbook.htm>

Handbook for Employers: <http://www.iowaworkforce.org/ui/uiemployers.htm>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate through the Skilled Iowa Initiative: <http://skillediowa.org/>

Becoming a member employer through Skilled Iowa and utilizing internships: <http://skillediowa.org/>

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**DUSTIN P HOOVER**  
Claimant

**APPEAL 20A-UI-09371-BH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MECHANICO CONCRETE LLC**  
Employer

**OC: 01/19/20**  
**Claimant: Appellant (1)**

Iowa Code section 96.5(1) – Voluntary Quit  
Iowa Code section 96.5(2)(a) – Discharge for Misconduct  
Iowa Administrative Code rule 871-24.32(1)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Dustin P. Hoover filed an appeal from the July 30, 2020 (reference 02) unemployment insurance decision that denied benefits based upon the determination the employer, Mechanico Concrete, LLC (Mechanico) discharged him because of job-related misconduct. The parties were properly notified of the hearing. A telephone hearing was held September 17, 2020. Hoover participated and testified. Mechanico participated through owner Bill Grall, owner Logan Barkhaus, employee Jose Cruz Torres, employee Connie Grall, and manager Jason Hudson, all of whom testified.

**ISSUE:**

Did Mechanico discharge Hoover for job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Mechanico hired Hoover on October 4, 2018. Hoover worked full time as a laborer in concrete. Hoover's immediate supervisor was Hudson. Mechanico discharged Hoover on May 4, 2020.

Hoover was an excellent employee in 2019. Mechanico gives employees an annual Christmas bonus based on merit. Hoover's 2019 Christmas bonus was the largest Mechanico gave to an employee that year.

Hoover's attitude changed in 2020. He testified that he began to sour on the job with Barkhaus called him a "fat ass" while he was working. According to multiple employer witnesses, Hoover's behavior on the job began to hurt morale.

On or about May 1, 2020, Hoover sent a series of text messages to coworker Chad Grove. Hoover was frustrated about work and decided to vent to Grove. It just so happened that Grove was standing next to Joe Grall, one of the Mechanico owners, to whom Grove showed Hoover's texts.

In the text messages, Hoover called Hudson a “huge liar.” He complained that Mechanico had an “illegal Mexican” working with a fake name and stolen Social Security Number who “can’t communicate worth a fuck” and is “laziest motherfucker I’ve seen.” Hoover took exception to the coworker getting to stay on full time during the offseason while he was on seasonal layoff. He contended Hudson knew that the coworker was an illegal immigrant, working unlawfully, but did nothing. The coworker Hoover referenced in the messages is Torres, who is authorized to work in the United States by the federal government.

Hoover also sent text messages stating that, because Hudson knew of the situation, Bill Grall could lose the business. In the messages, Hoover shared that it “really fucks [him] up.” He further shared that “someone’s gonna pay for ruining [his] life[.] I’m going to ruin theirs straight up and I’ll go do my time.”

Mechanico ownership met and decided to discharge Hoover because of his bad attitude, insubordination, the false statement he made about Torres, and the threats he made in the text messages. Hoover contends that Mechanico ownership misinterpreted the text messages, he never intended to threaten violence, and he was just venting.

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

The evidence establishes Mechanico discharged Hoover from employment due to job-related misconduct.

Iowa Code section 96.5(2)(a) disqualifies an individual from unemployment insurance benefits if the employer discharged the individual for misconduct. The statute does not define “misconduct.” But Iowa Administrative Code rule 871-24.32(1)(a) does:

“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.

The Iowa Supreme Court has consistently held this definition accurately reflects the intent of the legislature in enacting the Iowa Employment Security Law. See, e.g., *Irving v. Employment Appeal Bd.*, 883 N.W.2d 179, (Iowa 2016) (superseded on other grounds by 2017 Iowa Acts ch. 70, § 3 (codified at Iowa Code § 96.5(11)) (citing *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6, 9 (Iowa 1982)).

The employer has the burden to prove misconduct that makes a claimant ineligible for unemployment benefits. *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In unemployment appeals, the question is not whether the employer made the right decision when

it discharged the claimant in separating claimant. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The question is whether the claimant is entitled to unemployment insurance benefits under the law. *Id.*

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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 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. *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. *Id.*

Here, the evidence shows Hoover sent text messages to a coworker that falsely accused Hudson knowingly allowed an immigrant who the federal government had not authorized to work in the United States, worked for Mechanico. He also threatened to ruin the lives of the members of Mechanico management and/or ownership, and then do the prison time that resulted from his actions. These text messages constitute misconduct under Iowa Code section 86.5(2)(a) and rule 871-24.32(1)(a) because they contain threats against employees and owners of Mechanico as well as false allegations against a manager and coworkers of illegal activity. Benefits are denied.

#### **DECISION:**

The July 30, 2020 (reference 02) unemployment insurance decision is affirmed. Mechanico discharged Hoover due to job-related misconduct. Benefits are withheld until such time as Hoover has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Even though Hoover is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if Hoover is eligible for such compensation for the week claimed.

This decision does not address whether Hoover is eligible for PUA. For a decision on such eligibility, Hoover must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.



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Ben Humphrey  
Administrative Law Judge

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September 24, 2020  
Decision Dated and Mailed

bh/sam

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>