

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DARYL L BOOGERD**  
Claimant

**AMVC EMPLOYEE SERVICES LLC**  
Employer

**APPEAL 15A-UI-09965-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/09/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 25, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on September 18, 2015. The claimant participated personally. The employer participated through Michelle Shook, director of human resources. Employer witnesses included Randy Egenes and Gail Erdman. Dan Weber was an observer. Employer Exhibits 1, 1A, 2, 2A, and 3 were admitted into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a swine specialist and was separated from employment on August 6, 2015, when he was discharged (Employer Exhibit 3).

The employer operates a farm and has policies, including biosecurity measures, which require an employee shower or at least change clothing if they leave the primary farm, visit another farm, and return to the primary farm (Employer Exhibit 1). The policies are in place to prevent the spread of disease and contamination from one group of animals to another. The employer has experienced multiple occasions of illness being spread, which has resulted not only in the deaths of many pigs, but also a loss of revenue associated with the deaths. As a result, the employer also places its employees on notice that violations of biosecurity matters can result in immediate discharge (Employer Exhibit 1A). The claimant was made aware of the employer's expectations at the time of hire (Employer Exhibit 1A).

The final incident occurred on August 6, 2015, when the claimant left the primary farm to visit another farm, and returned to the primary farm. The claimant failed to shower or change out of his contaminated/exposed clothes, stating he was in a hurry and forgot. He was subsequently discharged.

The claimant received two prior warnings related to failure to follow protocol before his discharge. On March 16, 2015, the claimant received a written warning for failure to keep proper inventory of gilts (female pigs), and on April 21, 2015, the claimant was issued a written warning for failing to provide feed to sows for several days, which can result in harm to the mother pig and baby pigs relying upon the nutrients from the mother's food (Employer Exhibits 2 and 2A).

#### **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 § 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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

Cognizant of the claimant's experience in the industry, it does not negate the claimant's recent pattern of noncompliance with the employer's policies and procedures related to its animals. The claimant had on multiple occasions failed to follow the established rules for treatment and safety of the pigs on the farm. Further the final incident was severe, and avoidable, inasmuch as the claimant could have brought in disease by failing to remove contaminated clothing. The result could have been harmful to the pigs' health, as well as the financial well-being to the employer. Based on the evidence presented, the claimant knew or should have known his conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer has a right to expect of its employees. Benefits are withheld.

**DECISION:**

The August 25, 2015, (reference 01) unemployment insurance 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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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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