

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVEN L CROSS
Claimant

AREA AMBULANCE AUTHORITY
Employer

APPEAL 19A-UI-03187-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/17/19
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 9, 2019, (reference 01), decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 7, 2019. Claimant participated. Employer participated through (representative) Shelia Schmidt, Human Resources Associate Vice-President and Amber Herboldsheimer, Dispatch Lead.

ISSUE:

Was the claimant discharged due to job connected misconduct sufficient to disqualify him from receipt of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time initially as a medic beginning on June 26, 2006. On January 19, 2015 he was demoted as a dispatcher where he worked until he was discharged on March 18, 2019.

As a dispatcher the claimant was responsible for tracking the emergency vehicles out in the field. Claimant had been given access to the employer's policies and procedures. Claimant knew that he was to follow the procedures and that he was to initiate contact with the driver's in the field, not to rely on them contacting him. Tracking the vehicles was the responsibility of a dispatcher.

Car 15 was used to transport psychiatric patients. Sometimes it would be two medics and patient in the car, but often it was only the patient and one medic. The car was equipped with guards to stop the patient riding in the back of the car from interfering with the medic driving the car. On March 14 one medic was in the car with one patient for a transport. The medic left the Cedar Rapids area around noon in Car 15 and drove to Anamosa where he picked up the patient. The medic then drove to Des Moines where the patient was taken to a local hospital. The medic then drove back to Cedar Rapids. The claimant was working that day from 5:30 a.m. until 5:30 p.m. It was his responsibility to track Car 15. The claimant should have contacted Car 15 to track where he was at least sometime during the work shift.

When Ms. Herboldsheimer (claimant's direct supervisor) arrived at work shortly before 5:30 p.m. she noted that no contact had been made with Car 15 since 11:54 a.m., over five hours prior. When she asked the claimant about the location of Car 15, he did not tell her that he had tried to contact Car 15 via radio twice and there had been no answer. If that had actually occurred, then the claimant should have notified a supervisor he was unable to make contact with Car 15 so that further action could be taken. Ms. Herboldsheimer contacted Car 15 while the claimant was still at work and was able to make immediate radio contact with the medic driving the car.

The employer expects the dispatcher to keep track of the vehicles on the road to insure the safety of their employees and the patients they transport. Without contact with Car 15 the claimant would have no way of knowing if the medic had an accident, or had trouble with the patient or needed assistance. The claimant had access to the proper procedures and protocols for staying in contact with Car 15. The protocols and procedures were not changed by the employer after the claimant was discharged. The employees were given reminders by the employer about what they were to be doing, but no new procedures were put in place.

The claimant was given a final written warning for job performance in February 2019 when he sent ambulances to the wrong address twice in the same day. Sending ambulance to the wrong address twice in one day is a serious issue for a dispatcher. The day before the ambulances were sent to the wrong addresses, the claimant failed to obtain a call back number for a patient transport. Obtaining a contact telephone number from someone requesting a patient transfer is a normal job duty for a dispatcher. There is a spot in the computer system that is highlighted for a telephone number to be entered. The team dispatched to pick up the patient transfer was sent to the wrong address. Because the claimant had not obtained a telephone contact number, he had to scramble to try and locate the correct patient pick up and transfer information.

When the employer reviewed the claimant's personnel record, they discovered that the claimant had been given a final written warning in August 2018. As management had changed and no one had followed up with the claimant, after that final warning, the employer decided to give the claimant another final warning in February 2019 with a suspension instead of discharging him. Claimant was warned on February 14 that one more rule infraction would lead to his discharge.

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. Benefits are denied.

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 proof in establishing disqualifying job 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 must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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).

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.

The employer's witnesses offered more credible testimony than that of the claimant. The claimant's allegation that he tried to contact Car 15 twice is not believable in that he never told Ms. Herboldsheimer that when she questioned him at 5:30 p.m. If the claimant had made two attempts that were not answered, then it does not explain why he did not notify a supervisor that he could not reach anyone in Car 15. What is more believable is that the claimant chose not to

contact Car 15 because he believed the driver of Car 15 should make contact with him. The employer's policy was clear and known to the claimant. The dispatcher was responsible for making the contact with the driver, not the other way around. Claimant jeopardized the safety of a patient and an employee by failing to properly track Car 15 on March 14. The employer did not institute any new procedures after claimant was discharged. The employer merely gave the other employees a friendly e-mail reminder about what they were to be doing.

Claimant's repeated failure to completely and accurately perform his job duties after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a.

DECISION:

The April 9, 2019 (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs