

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMOS DANIEL
Claimant

ELPLAST AMERICA INC
Employer

APPEAL 23A-UI-09245-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/03/23
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant, Amos Daniel, filed an appeal from the September 22, 2023, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she was discharged for insubordination. The parties were properly notified of the hearing. A telephone hearing was held on October 16, 2023, at 10:00 a.m. This initial hearing was postponed because the employer stated a vital witness would not be able to participate at that time.

A new hearing notice was sent to both parties informing them of a hearing on October 25, 2023, at 10:00 a.m. The claimant participated and testified. The employer participated through Logistics Manager of the Warehouse Chris Simonsen and Human Resources Manager Sheila Smidt.

The employer's proposed exhibits were not admitted because they were not sent to the Appeals Bureau, or the claimant, as required by Iowa Admin. Code r. 871-26.15.

ISSUES:

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 worked as a full-time warehouse clean associate from April 27, 2023, until she was separated from employment on August 31, 2023, when she was terminated. The claimant's immediate supervisor was Team Lead Blake Eldridge. Mr. Eldridge reported directly to the logistics manager of the warehouse, Chris Simonsen. The claimant worked from 10:00 p.m. to 6:30 a.m. Monday through Friday.

The employer has an employee handbook. The employee handbook defines several behaviors as unacceptable conduct that can lead to disciplinary action up to and including termination of

employment. These behaviors include: (1) insubordination, (2) failure to follow the directives of a supervisor, and (3) failure to perform job duties. The claimant received the employee handbook on August 30, 2023. He received training regarding the policy provisions at that same time.

As a warehouse clean room associate, the claimant was responsible for stacking pallets and getting them ready for product to rest on them. Team Lead Blake Eldridge was responsible for assigning tasks for the claimant to complete.

On May 23, 2023, the claimant was directed by the team lead on duty to put away storage, stack pallets, and get them ready for product. Mr. Simonsen asked the claimant why she had not been performing these tasks as instructed. The claimant said that she was not responsible for performing these tasks. The claimant explained to Mr. Simonsen that Human Resources Manager Sheila Smidt told her that he did not have to perform these tasks. Mr. Simonsen replied that the claimant had been specifically trained to do these tasks.

On May 25, 2023, the employer issued the claimant a written warning for refusing to perform the assigned tasks on May 23, 2023. During the meeting it was stressed that if this issue continued, then the claimant could receive additional discipline, up to and including termination.

At 6:10 a.m. on August 30, 2023, Mr. Eldridge saw a pallet that had not been stacked properly. He ordered the claimant to stack the pallet on top of a pile so that it was aligned properly. The claimant told Mr. Eldridge that another employee was responsible for those pallets being misaligned. The claimant added that she did not have the time to realign the one pallet, as requested, because her shift was ending at 6:30 a.m. and she had other tasks to complete. Mr. Eldridge insisted the claimant perform the task. Mr. Eldridge called Mr. Simonsen because of the claimant's continued refusal to do the assigned task. While Mr. Eldridge and the claimant were on the phone with Mr. Simonsen, the claimant repeated that it was not her responsibility because someone else had left the pallet like that. The claimant yelled that she was not stacking it and declared it was not her job. Upon hearing this, Mr. Eldridge and Mr. Simonsen ordered the claimant to go home for the day. The claimant refused to go home until the end of her shift at 6:30 a.m.

On August 31, 2023, Ms. Schmidt informed the claimant that she was going to be terminated due to her refusal to perform the assigned work on August 30, 2023.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

The claimant refused to answer specific questions or take specific direction from the administrative law judge during her testimony. She offered little detail about the circumstances on August 30, 2023. What little detail she provided confirmed the employer's central allegation, the claimant acknowledged Mr. Eldridge had the ability to direct her assignments, but he told him she was going to do other assignments instead and would not have the time to complete them all. As to the employer's allegation that the claimant refused to leave that day, the claimant offered that she was leaving at 6:30 a.m. anyway, which is not consistent with his allegation that she did not have the time to move one pallet. The administrative law judge notes that both parties recognize the claimant, Mr. Eldridge and Mr. Simonsen were on a conference call. As brief as that call might have been, it likely took longer than restacking a pallet, so it could be aligned properly.

She also described the disciplinary meeting on May 25, 2023, as merely the employer's management team yelling indecipherable things at her. She claimed she had no idea after attending the meeting what she had been disciplined for, but claimed it was for a reason other than the employer's stated reason at the hearing. It is difficult to imagine a disciplinary meeting being conducted in this manner.

Ultimately, the administrative law judge finds this testimony far less credible than the specific descriptions of events given by the employer's witnesses.

Iowa Code section 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.

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).

Iowa Code section 96.5(2)b, c and d provide:

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:

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(1) Material falsification of the individual's employment application.

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

(3) Intentional damage of an employer's property.

(4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.

(5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

(7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.

(8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.

(9) Excessive unexcused tardiness or absenteeism.

(10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.

(11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.

(12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

(13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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). 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). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

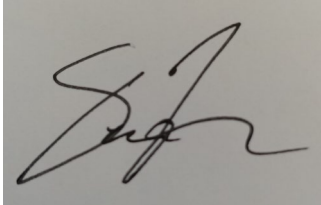
An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). "Willful misconduct can be established where an employee manifests an intent to disobey the reasonable instructions of his employer." *Myers v. IDJS*, 373 N.W.2d 507, 510 (Iowa 1983) (quoting *Pierce v. IDJS*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988)). This requires an evaluation of the reasonableness of the employer's request and the claimant's reason for non-compliance objectively. To evaluate the claimant's reason for non-compliance from his subjective viewpoint would result in benefits being paid to someone whose "behavior is in fact grounded upon some sincere but irrational believe and where the behavior may be properly deemed misconduct." *Aalbers v. IDJS*, 431 N.W.2d 330, 337 (Iowa 1988).

In this case, the claimant refused to restack a single pallet for two reasons. First, the claimant believed she should not be responsible for restacking and aligning this pallet because another worker left it in the incorrect position. The claimant further took Mr. Eldridge's command as nagging her and unfairly casting blame for the pallet being in that state. Second, the claimant believed she had far too much work to perform otherwise to do this assigned task.

The administrative law judge finds the claimant did not have a good faith reason for non-compliance. The claimant acknowledged Mr. Eldridge had the power to direct her assignments. So whatever assignments she believed needed to be performed otherwise, at a minimum, had lower priority than this one. As observed in the credibility section, the claimant maintains she left on time anyway, despite a phone call with Mr. Simonsen. The claimant had 15 to 20 minutes to realign one pallet. So, her contention that she did not have the time is not objectively reasonable. To the extent the claimant believed she was being unfairly blamed for the pallet being misaligned, this is also not a reason for non-compliance. It made no difference who had left it in that state, the job had to be done as assigned by her immediate supervisor. Benefits are denied.

DECISION:

The September 22, 2023, (reference 01) unemployment insurance decision is AFFIRMED. The claimant was discharged from employment for disqualifying misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read "Sean M. Nelson".

Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

November 6, 2023
Decision Dated and Mailed

smn/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

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:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly 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.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.