

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
6200 Park Avenue, Suite 100  
Des Moines, Iowa 50321-1270  
eab.iowa.gov**

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**CHAD A BOUSUM**

Claimant

and

**DISCOVERY IOWA EMPLOYER LLC**

Employer

: **APPEAL NUMBER: 24B-UI-06232**  
: **ALJ HEARING NUMBER: 24A-UI-06232**  
:  
: **EMPLOYMENT APPEAL BOARD**  
: **DECISION**  
:  
:  
:

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2a, 96.5-1**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board, with one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

Chad Bousum ("Claimant") worked for Discovery Iowa Employer LLC ("Employer") as a full-time Executive Director of a senior living community. The Claimant's last day of work was May 23, 2024, when he was discharged. The Claimant received a copy of the Employer's handbook, which informed him that examples of misconduct that could result in discipline include failure to dress according to Company policy and exhibiting disrespectful or intimidating behavior. He also received training on communication for supervisors and conflict management skills.

The Employer received complaints from its off-site IT department that Claimant was difficult to work with. The Employer gave Claimant a verbal warning and instructed him to remain calm and not use inappropriate language when interacting with others. The Employer also gave the Claimant a verbal warning after receiving reports that he was coming into the workplace wearing open-toed shoes. During a subsequent meeting with Department Heads, Claimant asked who "snitched" on him for wearing open-toed shoes. This made the

Department Heads uncomfortable and it was reported to Employer. On April 10, 2024, the Claimant received a written warning for confronting the Department Heads in such an unprofessional manner.

On May 7, 2024, the Employer put the Claimant on a Performance Improvement Plan ("PIP"). The PIP addressed communicating professionally, attendance, dress code, and quality of work. Between May 7, 2024, and May 23, 2024, the Employer received four additional complaints regarding the Claimant's performance. A vendor complained to the Employer it no longer felt comfortable working with the Claimant due to his tone of voice. The Area Manager received a complaint from an employee regarding the Claimant's communication style. A couple of family members of residents also reached out to the Employer to complain about the Claimant's communication style. Specifically, the Claimant told a family member that if they did not like the way something was done at the facility, they could move their loved one somewhere else. The Claimant also ended a call with the family members by hanging up on them.

Seeing no improvement in the Claimant's behavior, on May 23, 2024, the Employer terminated the Claimant's employment.

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

Iowa Code Section 96.5 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 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.

....

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 results 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 license, 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982); Iowa Code §96.6(1). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

Generally, continued failure to follow reasonable instructions constitutes misconduct. *See Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). 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). "[W]illful 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 *Sturniolo v. Commonwealth, Unemployment Compensation Bd. of Review*, 19 Cmwlt. 475, 338 A.2d 794, 796 (1975)); *Pierce v. IDJS*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988). The Board must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. *See Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). Good faith under this standard is not determined by the Petitioner's subjective understanding. Good faith is measured by an objective standard of reasonableness. Otherwise benefits might be paid to someone whose "behavior is in

fact grounded upon some sincere but irrational belief and where the behavior may be properly deemed misconduct.” *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988). “The key question is what a reasonable person would have believed under the circumstances.” *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); accord *O’Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993)(objective good faith is test in quits for good cause).

In this case, Claimant failed to conduct himself as a professional, even after being warned and counseled to do so on numerous occasions. This is not a case where Claimant was “incapable” of behaving professionally. He simply chose not to do so. Claimant’s actions, when considering he was the Executive Director of a senior living community, were in deliberate disregard of Employer’s interests and amount to misconduct. Accordingly, Claimant is disqualified from benefits.

Finally, since the Administrative Law Judge allowed benefits and in so doing affirmed a decision of the claims representative the Claimant falls under the double affirmance rule:

871 IAC 23.43(3) Rule of two affirmances.

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

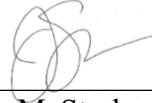
- (1) The protesting employer involved shall have all charges removed for all payments made on such claim.
- (2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.
- (3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

Thus the Employer’s account may not be charged for any benefits paid so far to the Claimant for the weeks in question, but the Claimant will not be required to repay benefits already received.

**DECISION:**

The administrative law judge’s decision dated July 29, 2024 is **REVERSED**. The majority of the Employment Appeal Board concludes that the claimant was discharged for disqualifying misconduct. Accordingly, he is denied benefits until such time the Claimant has worked in and has been paid wages for insured work equal to ten times the Claimant’s weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(2)(a).

No remand for determination of overpayment need be made under the double affirmance rule, 871 IAC 23.43(3), but still the Employer's account may not be charged.



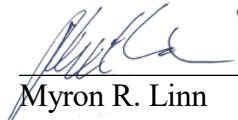
James M. Strohman



Ashley R. Koopmans

**DISSENTING OPINION OF MYRON R. LINN:**

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would affirm the decision of the administrative law judge.



Myron R. Linn

**CAL/mes**

**DATED AND MAILED SEPTEMBER 11, 2024**