

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KEITH E ALLEN**  
Claimant

**CNH AMERICA LLC**  
Employer

**APPEAL 19A-UI-08502-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/21/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On October 29, 2019, Keith E. Allen (claimant) filed an appeal from the October 24, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination CNH America, LLC (employer) discharged him for violation of a known company policy. The parties were properly notified about the hearing. A telephone hearing was held on November 20, 2019. The claimant participated personally. The employer participated through Joyce Stimpson, Human Resource Manager, and Travis Fraise, Maintenance Supervisor. The Claimant's Exhibit A was admitted into the record. The employer's third-party representative did not submit documents for the hearing until after the hearing had started and the documents were not received by the administrative law judge until after the record had closed. The documents were not admitted into the record or considered for this decision.

**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 Machine Operator beginning on November 12, 2012, and was separated from employment on October 1, 2019, when he was discharged. The claimant worked in a manufacturing facility where flammable liquid was present at different times throughout the day. The employer has designated smoking areas and all other areas of the facility are non-smoking areas.

On September 26, 2019, Travis Fraise, Maintenance Supervisor, was looking at an issue in the claimant's work area. While standing near a pallet, he observed the claimant light a cigarette while at his work station, which is not a designated smoking area. When the claimant saw Fraise, he dropped the cigarette in the pit of the machine and tried to wash it down the drain with coolant. Fraise reported the issue to the claimant's supervisor and Human Resources who came down to talk to the claimant. Fraise and the claimant's supervisor had to ask him multiple times to stop trying to clean the pit before he would stop. The employer suspended the claimant pending investigation and he was discharged on October 1, 2019 for violation of the employer's smoking policy. The claimant had not received any prior warnings related to similar conduct.

## 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events. The employer provided first-hand witnesses to the events who provided consistent testimony. At times, the claimant provided conflicting testimony. Notably, when addressing the amount of pain he was experiencing that day. He initially stated his neck pain was so great he accidentally lit a cigarette and was not aware of his actions. However, when he was later addressing the amount he was moving his neck as he was leaving the building, he indicated he was not in a lot of pain due to the amount of ibuprofen he had taken that morning before work.

The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer has an interest and legal obligation to provide a safe and smoke-free work environment. The claimant's conduct was a deliberate disregard of the employer's interests and the reasonable standards of conduct the employer has the right to expect from its employees. The claimant's contention that he negligently lit a cigarette due to pain and did not deliberately violate the employer's policy is not persuasive. He immediately threw the cigarette away when he was observed by a member of management and attempted to cover up his conduct by washing the cigarette down the drain. The claimant's conduct is disqualifying even without prior warning. Benefits are denied.

**DECISION:**

The October 24, 2019, 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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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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