

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**DARRELL R FISHER**  
Claimant

**AUTO SYSTEMS EXPERTS INC**  
Employer

**APPEAL 18A-UI-11821-DB-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 11/04/18**  
**Claimant: Respondent (1)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-23.43(9)a – Combined Wage Claim Relief of Charges

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the December 4, 2018 (reference 01) unemployment insurance decision that found the employer cannot be relieved of charges based on benefits paid by another state. The parties were properly notified of the hearing. A telephone hearing was held on December 26, 2018. The claimant, Darrell R. Fisher, participated personally. The employer, Auto Systems Experts Inc., participated through witnesses Alan Mahrt and Nathan Tegue. Claimant's Exhibits A and B were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUE:**

Can the Iowa employer be relieved of benefit charges on the combined wage claim?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time as a Senior District Manager when he was discharged on November 2, 2018. Claimant's job duties included supervising two other district managers and overseeing overall operations at four retail store locations. Mr. Mahrt was claimant's immediate supervisor. Claimant was originally hired on June 12, 2017 as a Director of Operations but transferred to the Senior District Manager position in January of 2018.

The final incident which led to claimant's discharge occurred on October 31, 2018 when he failed to meet the requirements of a 90-day performance improvement plan that was implemented in August of 2018. Mr. Mahrt had instituted a performance improvement plan in August of 2018 for claimant to comply with for August, September and October of 2018. The plan included but was not limited to an 8% sales increase for the quarter, ranking in the top five markets for a brake contest, ranking in the top five markets for credit card applications, ranking in the top five markets for oil conversions, ranking in the top five markets for capturing customer emails, having gross profits above 75%, having parts profits above 55% and having tire profits above 29%. After the 90-day performance improvement plan, claimant had failed to meet several of the requirements that were set forth in the improvement plan. Claimant did not

engage in any intentional or deliberate actions that caused the stores to fail to meet the requirements set forth in the performance improvement plan. After claimant was discharged, he filed a combined wage claim in Illinois, but earned wages from this Iowa employer.

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

For the reasons that follow, the administrative law judge concludes as follows:

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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Further, 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *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). Further, 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).

There was no evidence presented that claimant's failure to meet the requirements of the performance improvement plan were caused by a deliberate act or omission of the claimant or were caused by claimant's carelessness or negligence which indicated a wrongful intent. 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 Bd.*, 616 N.W.2d 661 (Iowa 2000). Reoccurring acts of negligence by an employee would probably be described by most employers as in disregard of their interests. *Greenwell v Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. March 23, 2016). The misconduct legal standard requires more than reoccurring acts of negligence in disregard of the employer's interests. *Id.* No evidence of job-related misconduct was established in this case.

Iowa Admin. Code r. 871-23.43(9)(a) and (b) provide:

Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

b. The Iowa employer whose wage credits have been transferred and who has potential liability will be notified that the wages have been transferred, the state to which they have

been transferred, and the mailing address to which a protest of potential charges may be mailed. This protest must be postmarked or received by the department within ten days of the date on the notice to be considered as a timely protest of charges. If the protest from either the reimbursable or contributory employer justifies relief of charges, charges shall go to the balancing account.

The employer shall not be relieved of charges on this combined wage claim since it failed to meet its burden of proof in establishing disqualifying job-related misconduct and would not have been relieved of charges based upon this fact scenario on an Iowa claim. Claimant's qualification and eligibility shall be determined by the State in which the claim was filed.

**DECISION:**

The December 4, 2018 (reference 01) unemployment insurance decision is affirmed. The account of the employer cannot be relieved of charges based on benefits paid by another state. Claimant's qualification and eligibility shall be determined by the State in which the claim was filed.

---

Dawn Boucher  
Administrative Law Judge

---

Decision Dated and Mailed

db/rvs