

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ROGER C HANSON**  
Claimant

**APPEAL NO. 14A-UI-01016-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BHJUSA INC**  
Employer

**OC: 01/05/14  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Roger Hanson (claimant) appealed a representative's January 24, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with BHJUSA (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 18, 2014. The claimant participated personally. The employer participated by Dale Hudson, Plant Manager. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired for a second period of employment on September 20, 2013, as a full-time maintenance worker. The claimant signed for receipt of the employer's handbook on September 20, 2013. The handbook indicates "downloading files must be limited to those which relate directly to Company business and have been approved by the HR/Accounting Manager and/or the President".

The employer purchased three overalls for the claimant. The first pair of coveralls was in the claimant's size but the claimant wanted zippers up his legs so he did not have to remove his boots to put them on. He rejected them. The next two pair had zippers on the legs but the claimant rejected them because they were too long in the inseam. The employer told the claimant coveralls were not available in the claimant's size with zippers. The claimant told the employer he would do without coveralls.

On December 30, 2013, the claimant was told to perform work for the employer. The claimant did perform some work. He told the employer that if they did not like the way he was working, the employer could fire him.

On December 31, 2013, the employer discovered the claimant had downloaded 180 surveillance videos of the inside and outside of his home. The person the claimant thought of as an acting manager let the claimant use his computer. The claimant was having problems with break ins at his home. The claimant downloaded 180 videos of his home without permission from the human resources/accounting manager or the president. The employer terminated the claimant on January 2, 2014.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant did not follow instructions regarding wearing coveralls, performing work, or downloading files on the employer's computer system. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's January 24, 2014, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until 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.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs