

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

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**SERGIO RUVALCABA**  
Claimant

**APPEAL 24A-UI-05057-PT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PBX INC**  
Employer

**OC: 04/21/24  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant, Sergio Ruvalcaba, filed an appeal from a decision of a representative dated May 17, 2024, (reference 01) that held the claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on June 12, 2024. The claimant participated personally and was represented by attorney Mary Hamilton. The employer, PBX Inc.<sup>1</sup> participated through Senior Human Resources Business Partner Tami Story and Warehouse Manager Andrew Jones. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Whether the claimant was discharged for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant began working as a full-time services coordinator at PBX Inc. on September 6, 2022. The claimant's employment ended on April 18, 2024, when he was discharged.

As a services coordinator, the claimant was responsible for maintaining six trucks and approximately 180 trailers, ordering parts, coordinating drivers, monitoring fuel levels, and making repairs as needed. The claimant typically worked Monday through Friday from 7:00 a.m. to 5:00 p.m., but he also often worked overtime. The employer has a written employee manual that includes a code of conduct policy. The code of conduct policy prohibits insubordination, defined as refusing to perform work or an assignment as directed. The claimant received a copy of the employee manual and was familiar with the employer's work rules and policies.

In September 2023, the claimant had a confrontation with another employee. During the confrontation, both employees became upset and yelled at one another. After investigating the incident, the employer issued both employees disciplinary warnings for failing to treat each other with dignity and respect in violation of the employer's code of conduct policy.

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<sup>1</sup> At the hearing, both parties testified that the claimant was employed by Tyson Fresh Meats, not PBX Inc. However, WAGE-A reflects that all of the claimant's wages were paid by PBX Inc.

In late-March 2024, the claimant's supervisor asked the claimant to cross-train another team member on how to complete a report that was required to be submitted every Monday. On Monday, April 1, 2024, the claimant told the warehouse manager he was too busy to cross-train the employee, so he completed the report himself. The following Monday, April 8, 2024, the claimant again submitted the reports without training the other employee. The claimant's supervisor emailed the claimant asking why he had not cross-trained the employee. The claimant did not respond to the email.

On Monday, April 15, 2024, the claimant again submitted the reports without cross-training the other employee. Shortly before noon on April 17, 2024, the claimant's supervisor called the claimant and asked him to come to his office to discuss a situation. The claimant responded, "[the warehouse manager] knows where I work, he can come over and talk to me if he wants." After the call, the claimant's supervisor reported the situation to the warehouse manager.

At approximately 12:40 p.m. the warehouse manager called and instructed the claimant to come to his office. The claimant again refused. The warehouse manager told the claimant that if he would not come to his office, then they would need to go to Human Resources to discuss why the claimant was refusing to follow his instruction. The claimant again refused, stating something to the effect of, "I know what you want, you're just going to make me sign some paper." The warehouse manager explained to the claimant that refusing to follow his instructions was insubordination and that the claimant was putting his job in jeopardy by refusing to meet. The claimant then asked, "why are you trying to keep me from going on break?" The warehouse manager then told the claimant that he could take his lunch break, but that they would need to meet when he returned.

At 1:30 p.m. the warehouse manager went to the claimant's workstation to discuss the claimant's behavior. However, the claimant had not returned from his lunch break. The warehouse manager waited at the claimant's workstation for approximately 20 minutes, but the claimant did not return. The warehouse manager tried calling the claimant, but the claimant did not answer or return his call. The claimant never returned to work that day.

The next day, April 18, 2024, the claimant did not arrive at work at the start of his shift and he did not call and inform the employer that he would be absent. The claimant's supervisor tried calling the claimant, but he did not answer and did not return the employer's phone call. Later that morning, the employer terminated the claimant's employment for insubordination in violation of the employer's code of conduct policy. At some point on April 18, 2024, the claimant's medical provider faxed a letter to the employer's nursing station excusing the claimant from work until May 1, 2024. However, the claimant never notified the employer that he would be absent and the employer did not see the letter until after it had terminated the claimant's employment.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for 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:

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:

...

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

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) *Report required.* The claimant's statement and 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.

Iowa Admin. Code r. 871-24.32(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.

The issue is not whether the employer made a correct decision in separating the 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).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. Disqualification for a single misconduct incident must be a deliberate violation or disregard of standards of behavior which the employer has a right to expect. *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991).

Insubordination does not equal misconduct if it is reasonable under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.* 367 N.W.2d 300 (Iowa Ct. App. 1985). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. *Woods v. Iowa Dep't of Job Serv.*, 327 N.W.2d 768, 771 (Iowa 1982). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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).

In insubordination cases, the reasonableness of the employer's demand in light of the circumstances must be evaluated, 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). The key to such cases is not the worker's subjective point of view but "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 the test in quits for good cause). For example, in *Green v. IDJS*, 299 N.W.2d 651 (Iowa 1980) an employee refused to sign a warning to acknowledge that she understood why she was being warned. The Court found the refusal to be disqualifying as a matter of law, and did not focus on whether the warning was justified or not. *Green* at 655. The claimant's actions in refusing to do as told "show[ed] an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer." 871 IAC 24.32(1)(a).

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 I have resolved the disputed factual issues in this case. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above and using my own common sense and experience, the administrative law judge finds the employer's testimony concerning the claimant's awareness of the work rules and the claimant's communications with his supervisor and the warehouse manager to be more credible than the claimant's testimony regarding those issues. The employer's testimony was clear, consistent, and detailed, whereas the claimant's testimony was at times evasive and inconsistent with other believable evidence. For this reason, the administrative law judge has given greater weight to the employer's version of events than to the claimant's version of events.

In this case, the employer's instruction that the claimant meet with his supervisor to discuss why he had failed to cross-train the employee as instructed was reasonable. Rather than follow the employer's reasonable instruction, the claimant repeatedly refused to meet with his supervisor

and then left work halfway through his shift and never returned. The claimant then failed to appear for his shift the next morning and he did not call and notify the employer of his absence. The claimant's conduct in these instances was not in good faith or for good-cause and amounts to insubordination. The claimant's actions were a deliberate violation of company policy and of the standards of behavior the employer has a right to expect of employees. As such, the administrative law judge concludes that the claimant was discharged for a current act of disqualifying, job-related misconduct. Benefits are denied.

**DECISION:**

The May 17, 2024, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged for substantial job-related misconduct. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount after the April 18, 2024, separation date, and provided he is otherwise eligible.



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Patrick B. Thomas  
Administrative Law Judge

June 21, 2024  
Decision Dated and Mailed

pbt/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:

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

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