

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAVID A FRETT**  
Claimant

**COMMUNITY ACTION OF EASTERN IOWA**  
Employer

**APPEAL 22A-UI-01535-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/14/21  
Claimant: Appellant (1)**

Iowa Code § 96.5(1) - Voluntary Quit  
Iowa Code § 96.5(2)a - Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct  
Iowa Admin. Code r. 871-24.1(113)c - Discharge for Violation of Rules

**STATEMENT OF THE CASE:**

Claimant/Appellant, David Frettt, filed an appeal from the December 10, 2021, (reference 01) unemployment insurance decision that denied benefits based upon a 11/15/21 discharge for conduct not in the best interest of employer. The parties were properly notified of the hearing. A telephone hearing was held on February 8, 2022. The claimant participated. The employer, Community Action of Eastern Iowa participated through Arthur Eggers, counsel, and Jenny Kreiter, chief operating officer. Employer's Exhibits 1-10 were admitted without objection. Judicial notice was taken of the administrative file and the contents therein.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or a voluntary quit without good cause?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant began work with employer on March 25, 2019. His last day worked was November 10, 2021, when he was placed on paid leave, pending an investigation. See Employer's Exhibit 5. Claimant was a full-time community service site manager for the Clinton office, with a set schedule.

Employer has an employee handbook, that claimant would have received when he started with the employer, and was provided updates, most recently, on October 1, 2021, with the harassment in the workplace policy coming into play for the matter at hand. See Employer's Exhibits 10, 1 and 2.

There was a report of harassment wherein during a telephone call that included Sabrina Schaeffer and claimant. During the call, claimant responded to Ms. Schaeffer's request with, okay "buckwheat". Employer's Exhibits 3 and 4. Ms. Schaeffer is African American and female.

An investigation was conducted utilizing a questionnaire. Ms. Schaeffer, Ms. Ramos, and claimant turned in their questionnaires. Employer's Exhibits 6, 7 and 8. Claimant admits to making the statement, both in the questionnaire and in the hearing. Claimant asserts he had no racial intent, and it was merely a joke between the two of them. However, there were more than the two of them on the telephone line and both Ms. Schaeffer and Ms. Ramos reported the matter. They did not see the humor in the comment/conduct. After the investigation concluded, claimant was discharged by a November 12, 2021 letter, for violation of the harassment in the workplace policy, for using the racial slur "buckwheat" to an African American co-worker on November 10, 2021. Claimant received and signed for the letter on November 15, 2021.

### **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.

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.

Iowa Admin. Code r. 871-24.1(113)(c) provides:

Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.


c. *Discharge*. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

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). 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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant directed the racial slur "buckwheat" toward an African American co-worker, in violation of the employer's harassment policy. Claimant attempts to downplay the incident as a joke between the two parties, but harassment is not a joking matter and there were more than just the two individuals on the phone call. Claimant doesn't know why some other form of discipline was utilized. Keeping the workplace free of harassing behavior, a single violation can warrant termination. This is disqualifying misconduct.

**DECISION:**

The December 10, 2021, (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 they have worked in and been paid wages for insured work equal to ten times their weekly benefit amount, provided they are otherwise eligible.

  
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Darrin T. Hamilton  
Administrative Law Judge

February 28, 2022  
Decision Dated and Mailed

dh/mh

*Note to Claimant:*

Claimant provided an updated address during the hearing, by changing the attention line from Terri Walz to Jenny Kreiter. That corrected address is noted on the first page of this decision. Claimant is directed to contact IWD customer service at 1-866-239-0843 as soon as possible to update their contact information so that their information can be updated within our systems and not just on this one printed decision.