

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DANIEL G LOOFE**  
Claimant

**MANLEY ENTERPRISES INC**  
Employer

**APPEAL 21A-UI-23976-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/27/21  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the October 18, 2021 (reference 01) unemployment insurance decision that denied benefits finding claimant was discharged on July 1, 2021 for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on December 17, 2021. Claimant participated with his non-attorney representative Daniel Loofe, II. Employer participated through Scott Manley, Owner, and Milan Johnson, General Manager. No exhibits were admitted.

**ISSUE:**

Whether claimant's separation was a discharge for disqualifying job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time Service Technician from June 6, 2019 until his employment with Manley Enterprises ended on July 1, 2021. Claimant worked Monday through Friday from 8:00 a.m. until 5:00 p.m. Claimant's direct supervisor was Scott Manley, Owner.

Employer has a drug policy that provides employer has the right to require drug testing under Nebraska law (employer is located in Nebraska). The policy further provides that employees who violate the policy may be disciplined by termination of employment. The policy is included in the handbook. Claimant received a copy of the handbook.

On June 30, 2021, an employee told employer that he observed claimant using illegal drugs during the workday and that the empty bag that contained the drugs was still in the vehicle. Employer notified the police who retrieved and tested the bag. The test result was positive for cocaine.

On July 1, 2021, employer told claimant of the allegation of drug use and asked claimant to submit to a drug test. Claimant refused because he was aggravated by the allegation. Employer discharged claimant for refusing to submit to drug testing.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). 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).

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).

Employer has a drug policy that requires employees to submit to drug testing and references Nebraska law. Nebraska Revised Statute 48-1910 provides: "An employee who refuses the lawful directive of an employer to provide a body fluid or breath sample as provided in section 48-1903 may be subject to disciplinary or administrative action by the employer, including denial of continued employment." Employer received a report that claimant was using drugs while at work. The bag claimant used to contain the drugs tested positive for cocaine. As a result, employer requested claimant submit to a drug test. Employer's request was reasonable considering all circumstances.

Claimant refused to be tested because he was aggravated by the allegation. Claimant's refusal was not reasonable. Claimant's refusal to submit to drug testing constitutes insubordination and violated employer's policy and Nebraska law. Claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

**DECISION:**

The October 18, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



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December 30, 2021  
Decision Dated and Mailed

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