

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MITCHELL MYSLIWY**  
Claimant

**ARCHER DANIELS MIDLAND CO**  
Employer

**APPEAL NO. 21A-UI-05633-B2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/22/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 10, 2021, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 27, 2021. Claimant participated personally. Employer participated by Dana Kuehl.

**ISSUE:**

Whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 6, 2020.

Employer discharged claimant on November 17, 2020 because claimant had reported water clarity information after providing a visual inspection of the water when he his job was to have the water tested with resulting clarity determined by laboratory equipment. As it was an essential function of claimant's job to run the clarity tests, he was seen to have falsified his data and terminated.

Claimant worked in a lab for employer for two years. At the time of hire and throughout his training, he was told of the importance of accurate results. Claimant stated that in the two years he'd worked in the lab, he'd never guessed at a result until the incident in question. On November 5, 2020, a researcher called and asked claimant about the clarity level of a water sample. Claimant stated that the person sounded as though the matter was urgent. Instead of running a test of the water sample, claimant instead just looked at the sample and estimated the clarity level. This was witnessed by his supervisor. Employer investigated the incident and determined claimant had not performed his duty of actual testing in the lab. Claimant was seen to have falsified his results as they occurred from an educated guess on his part and not through lab testing.

Claimant stated that he was told that it was ok to not run the clarity test if claimant was ever busy or short handed. He further stated that in his two years working at the lab, he'd never guess at clarity before.

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

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:

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:

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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-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 Ct. 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. *State v. Holtz*, 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. *State v. Holtz*, Id. Here, claimant's testimony that employer had previously told him that he didn't need to conduct clarity tests if the lab was short-handed is not believable. It is both not believable on its face that claimant would be told that he could simply guess at an essential part of his job, and it is also not credible in light of the fact that claimant stated he'd never just guessed at any time in his previous two years on the job.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning falsification of lab results.

The last incident, which brought about the discharge, constitutes misconduct because not conducting tests the claimant is hired to do, and instead guessing at results is an abdication of the essential function of claimant's job. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated February 10, 2021, reference 01, is affirmed. Unemployment insurance benefits shall be withheld 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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Blair A. Bennett  
Administrative Law Judge

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April 30, 2021  
Decision Dated and Mailed

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