IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

GARRY L. STRATTON Claimant **ALLIED CONSTRUCTION SERVICES** Employer	**APPEAL 20A-UI-09500-BH-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/03/20** **Claimant: Appellant (2)**

Iowa Code section 96.5(2)(*a*) – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)(*a*) – Discharge for Misconduct

STATEMENT OF THE CASE:

Garry L. Stratton appealed the July 31, 2020 (reference 01) unemployment insurance decision that denied benefits. The agency properly notified the parties of the hearing. The undersigned presided over a telephone hearing on September 18, 2020. Stratton participated personally and testified. Allied Construction Services (Allied) participated through Nile Isaac, Stratton's immediate supervisor, who testified.

ISSUES:

Did Allied discharge Stratton for job-related misconduct?

Was Stratton's separation from employment with Allied Construction Services a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Allied hired Stratton on November 5, 2019, under a contract with the Carpenter's Union, Local 106. Stratton worked full time as a carpenter. Allied discharge Stratton on April 30, 2020.

Under the union contract with Allied, the mandatory work week was capped at 40 hours. Overtime was not mandatory. Employees could choose whether they would accept hours in excess of 40.

Allied contracted to perform work on a construction project for Amazon. Two crews were working at the site. One of the crews was working overtime hours; the other was not.

Isaac notified Stratton and his brother that they were being assigned to work at the Amazon site beginning on April 27, 2020. Due to poor communication between Allied and them, Stratton and his brother were under the mistaken belief that they would be working overtime at the Amazon site. Because Allied could not mandate that they work overtime, Stratton and his brother decided they would not work at all. There is no indication Stratton or his brother notified the union of any potential contract breach regarding overtime hours.

Isaac testified that Allied did not tolerate absences without notification, which are often referred to as no-call/no-shows. However, Isaac also testified that Stratton had ten no-call/no-shows before Allied reassigned him to the Amazon site. This demonstrates that Allied did tolerate no-call/no-shows and such tolerance was high, at least with respect to Stratton.

Regardless, the record establishes Stratton and his brother had contact with Allied regarding their absences on April 28 and 29, which are two of the three absences that led to Allied's decision to discharge Stratton. Even assuming for the sake argument that Stratton was a no-call/no-show on April 27, 2020, Allied did not discharge Stratton for that absence without notification.

On April 29, 2020, Stratton's brother spoke with Isaac. During the telephone conversation, Isaac told Stratton's brother that the two of them should turn in their tools if they did not want to work at the Amazon site. On April 30, 2020, Stratton and his brother went to Allied to turn in their tools.

Another manager asked the brothers what they were doing and they told him. The manager had the brothers go with him to his office, where he called Isaac. The manager spoke with Isaac on the phone and Isaac told him that he was done with Stratton and his brother. Thus, Allied discharged Stratton on April 30, 2020, because he refused to work at the job site to which the company assigned him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Allied discharged Stratton from employment for misconduct.

Under Iowa Code section 96.5(2)(a), an individual is disqualified for benefits if the employer discharges the individual for misconduct in connection with the individual's employment. The statute does not define "misconduct." But Iowa Administrative Code rule 871-24.32(1)(*a*) does:

> "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 Iowa Supreme Court has ruled this definition accurately reflects 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). 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).

Insubordination can manifest in several different ways. An employer has the right to expect an employee to follow reasonable directions. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Id*. Misconduct can be found when a claimant was discharged for refusing to complete job tasks after his shift because he created the extra job tasks by working too slow. *Boyd v. Iowa Dept. of Job Serv.*, 377 N.W.2d 1 (Iowa Ct. App. 1985). Continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). However, if the request was unreasonable or the claimant had a good faith belief or good cause to refuse the request, no misconduct would be found. *Woods v. Iowa Department of Job Service,* 327 N.W.2d 768, 771 (Iowa Ct.App.1982)(an employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause).

An instruction is reasonable if it presents no hardship to the employee and no threat to his or her health, safety, or morals. *See Endicott v. Iowa Dep't of Job Services*, 367 N.W.2d 300, 304 (Iowa App. 1985)(finding misconduct based on employee's unreasonable refusal to work overtime after employer's short-notice request). In this case, the question is whether Allied gave Stratton an unreasonable assignment to work 60 hours per week in violation of the union contract's provisions governing overtime. The evidence supports the conclusion that Allied did not intent for Stratton to work six ten-hour days at the Amazon site, but that Stratton believed in good faith that the company gave him such an assignment due to Allied's poor communication.

The issue therefore is whether Stratton's response to his good faith belief constitutes misconduct under the law. Stratton refused to go to work instead of voicing his concerns to the union or to Allied. Had Stratton communicated that he felt the assignment was in violation of the union contract, the parties to the contract could have addressed his concerns in a constructive manner. Instead, Stratton decided to not go to work.

Stratton's refusal to go to work when other avenues for addressing his concern were available is unreasonable. Consequently, Allied's decision to discharge him for refusing to come to work in order to avoid working at the Amazon site is a discharge for misconduct under Iowa law. Benefits are denied.

DECISION:
The July 31, 2020 (reference 01) unemployment insurance decision is reversed. Allied discharged Stratton from employment for no disqualifying reason. Benefits are allowed, provided Stratton is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Ben Humphrey
Administrative Law Judge

September 22, 2020
Decision Dated and Mailed

bh/scn