

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHAEL H BELIEU**  
Claimant

**DENT ELIMINATORS INC**  
Employer

**APPEAL 22R-UI-08218-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 09/05/21**  
**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 1, 2021 (reference 01) unemployment insurance decision that denied benefits finding claimant was discharged from Dent Eliminators on August 2, 2021 for conduct not in employer's best interest. The parties were properly notified of the hearing. A telephone hearing was held on December 28, 2021. Claimant participated. Employer participated through Jeff Robert, Owner and General Manager. No exhibits were admitted. Official notice was taken of the administrative record. On January 3, 2022, a decision was issued finding claimant's appeal of the October 1, 2021 (reference 01) decision untimely and, thus, affirming the disqualification (see appeal 21A-UI-24330-AW-T).

On January 7, 2022, claimant appealed to the Employment Appeal Board (EAB). On March 14, 2022, the EAB found claimant's appeal timely and remanded this matter to the Appeals Bureau for a decision on the merits. A decision can be made based upon the administrative record and the hearing record in appeal 21A-UI-24330-AW-T. No additional testimony is necessary. Therefore, a second hearing was not scheduled or held.

**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 Wheel Technician Assistant from July 2019 until his employment with Dent Eliminators ended on August 2, 2021. Claimant worked Monday through Friday from 8:00 a.m. until 5:00 p.m.

Employer allows employees to perform work on their personal vehicles, or "side work," in its shop during the weekends. Employees must give employer advance notice each time they perform side work including the type of work to be performed. Employer informs the employee of the cost for using its supplies and materials. The employee pays for the supplies and

materials prior to performing side work. Essentially, an employee must obtain preapproval from employer each time he performs side work.

In or around May 2021, claimant performed side work painting wheels and did not receive prior approval from employer. Claimant paid for the materials after performing the work. Employer warned claimant that he could not do side work unless he obtained permission and paid for materials up front.

In or around June 2021, claimant performed side work painting his motorcycle and did not receive prior approval from employer. When employer saw claimant's motorcycle, employer told claimant that the material cost was \$250.00. Claimant responded that he did not have the money to pay employer at that time. Employer told claimant that he could not perform any side work unless he paid for materials up front.

On Monday August 2, 2021, employer noticed that the shop was in disarray upon opening. Employer reviewed surveillance video and saw that claimant performed side work during the previous weekend. Claimant did not obtain prior approval from employer or pay for materials up front before completing the side work. On August 2, 2021, employer discharged claimant for performing side work without prior approval and without paying for materials in advance.

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

For the reasons that follow, the administrative law judge concludes:

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).

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 cannot be based on such past act or acts. The termination of employment must be based on a current act.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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). 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).

Claimant performed side work without employer's preapproval and without paying for materials up front on two occasions after receiving verbal warnings for that exact conduct. Employer's request for claimant to obtain preapproval and pay for materials up front was reasonable. Claimant's failure to do so was not reasonable. Claimant's repeated failure to follow employer's policy for side work after receiving warnings is a willful or wanton disregard of employer's interest and claimant's duties and obligations to employer. Claimant's actions constitute disqualifying job-related misconduct. Benefits are denied.

**DECISION:**

The October 1, 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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April 29, 2022  
Decision Dated and Mailed

acw/ACW