

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**NATHANIEL R SHEETS**  
Claimant

**APPEAL NO. 18A-UI-09961-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 09/02/18**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Nathaniel Sheets (claimant) appealed a representative's September 25, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Care Initiatives (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 15, 2018. The claimant participated personally. The employer was represented by David Williams, Hearings Representative, and participated by Valerie Frank, Administrator, and Natalie Trinkle, Director of Nursing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 14, 2016, as a full-time cook. He signed for receipt of the employer's handbook at his orientation on January 5, 2017. He also signed that he received the employer's "Bare Hand Contact with Food and Use of Gloves" policy. The employer required its employees to use clean barriers, such as gloves and deli paper, to prevent food borne illnesses.

On May 20, 2018, the employer performed a competency audit on the claimant. He wore gloves and did not place any food directly on the counter. The claimant passed the audit. The supervisor told the claimant to use butcher paper when making sandwiches. The claimant chose only to use the deli paper when he made peanut butter and jelly sandwiches.

On August 16, 2018, the employer issued the claimant a final written warning for not following sanitation policies. The claimant left cheese and half-and-half unrefrigerated while serving a meal. He did not place the cottage cheese on ice. The claimant did not wear gloves or use tongs to serve sandwiches. He placed his fingers on the inside of plates when picking them up. He also cut bananas on a cart with no barrier between the banana and the cart. The employer notified the claimant that further infractions would result in his termination from employment.

On September 5, 2018, the claimant was making sandwiches by placing the cold cuts directly on the counter with no barrier. He made the sandwiches this way because he always made his sandwiches this way. An employee saw that he was not wearing gloves but the claimant remembers that he was wearing gloves. On September 6, 2018, the employer terminated the claimant for failure to follow food safety instructions.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right

by repeatedly failing to follow the employer's instructions with regard to the food safety policy. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's September 25, 2018, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs