

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAVID FRILOUX**

Claimant

**AMAZON.COM SERVICES, INC.**

Employer

**CASE NO. 22IWDUI0073  
IWD APPEAL NO. 22A-UI-00591**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/17/2021  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

David Friloux filed a timely appeal from a December 3, 2021, unemployment insurance decision that denied unemployment benefits for violation of a known company rule. A telephone hearing was held February 9, 2022. The parties were properly notified of the hearing. The claimant participated and was self-represented. Neither the employer nor a representative for the employer called in for the hearing.

Official notice was taken of the documents in the administrative file. Neither party submitted exhibits.

**ISSUE:**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

David Friloux (Friloux) was employed as a full-time warehouse associate. His first day of employment at Amazon was April 30, 2021, and his last day was September 8, 2021. According

to Amazon documents, Friloux was discharged for a negative UPT (unpaid personal time) balance. Human resources coordinator, Nuria Martinez, fired Friloux. (11/22/21 letter from Amazon.) Amazon policy regarding UPT specifies "[i]n the event your UPT balance becomes negative and your time missed is not covered by any other time off policy, your employment status will be reviewed for termination."

Friloux had a set schedule at Amazon and worked Sunday – Wednesday. He was never written up during his employment at Amazon. He used his paid time off, and he used his UPT because of a family emergency. Friloux was instructed to report all absences on an employee app, and he always properly reported his absences. (Friloux testimony.)

A co-worker directed a racial slur at Friloux, and Friloux reported the incident to a manager named Steve and human resources. Friloux said he could not work the same shift as this employee. Friloux was told individuals at Amazon investigated the incident, but he was not given any information about the investigation. When Friloux arrived at work after the Labor Day holiday, the employee who used the racial slur was still assigned to the same shift as Friloux. Friloux told management he could not work with this individual and left work. He received an email from Amazon terminating his employment. (Friloux testimony.)

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

For the reasons that follow, the December 3, 2021, unemployment insurance decision that found Friloux ineligible for benefits is reversed.

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:

Iowa Administrative Code rule 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 constitute 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).

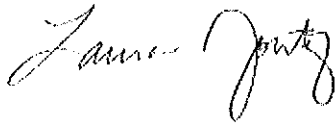
The employer has the burden of proof in establishing disqualifying job misconduct, and the employer in this appeal – Amazon – did not appear at the hearing. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, 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).

Friloux provided credible testimony his use of UPT was the result of a family emergency and an issue involving a racial slur directed at Friloux. Friloux testified he reported all absences on his Amazon app. Absences can rise to the level of misconduct if the absences are both excessive and unexcused. Absenteeism includes tardiness, or limited absences. See *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190 (Iowa 1984). To justify benefit disqualification, the final incident must rise to the level of misconduct. Iowa Admin. Code r. 871-24.32(8).

I find Amazon failed to meet the burden of proof required to disqualify Friloux from receiving unemployment benefits. Amazon failed to provide evidence of a final incident that rose to the level of misconduct. Amazon provided documentation that Friloux's use of UPT may have violated company policy but failed to show he had excessive and unexcused absences. Therefore, Friloux did not commit misconduct and benefits shall be allowed, provided he is otherwise eligible.

**DECISION:**

The December 3, 2021, unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



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Laura Jontz  
Administrative Law Judge

February 11, 2022

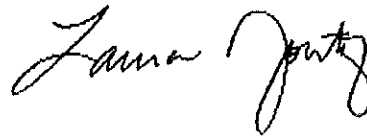
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Decision Dated and Mailed

CC: David Friloux, Claimant (by first class mail)  
Amazon.com Services, Inc. Employer (by first class mail)  
Natali Atkinson, IWD (by email)  
Joni Benson, IWD (by AEDMS)

**Case Title:** DAVID FRILOUX V. AMAZON.COM SERVICES INC  
**Case Number:** 22IWDUI0073  
**Type:** Order

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Laura Jontz". The signature is fluid and cursive, with the first name "Laura" written in a larger, more prominent script than the last name "Jontz".

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Laura Jontz, Administrative Law Judge