

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**FRANK M SCOTT**  
Claimant

**GENERAL DYNAMICS INFO TECH**  
Employer

**APPEAL 17A-UI-04510-DL**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/12/17  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct – Disciplinary Suspension  
Iowa Admin. Code r. 871-24.32(9) – Suspension or Disciplinary Layoff

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 18, 2017, (reference 02) unemployment insurance decision that denied benefits based upon a disciplinary suspension. After due notice was issued, a hearing was held on May 17, 2017, in Cedar Rapids, Iowa. Claimant participated by telephone. Employer participated in-person through senior human resources business partner Diane Fountain.

**ISSUE:**

Was the claimant suspended 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 customer service representative (CSR) through December 13, 2016, when he was discharged. He last worked on December 7, 2016 suspended without pay. On December 6 claimant and another CSR Tyshaye were in the break room and engaged in a verbal altercation involving raised voices and cursing about her tires having been slashed. The disruption continued to the call center production floor where customers could have heard them. Tyshaye was disciplined but not discharged because this was her first incident of discipline. The only other person in the break room, Gwendolyn, backed up Tyshaye's version of the event.

Fountain issued claimant a final written warning on December 12, 2016, about an incident on November 28, 2016, regarding a dispute at work about missing \$20.00 outside of work. He argued back and forth with Tayesha and told her not to go to his cubicle. Fountain warned him in writing on October 14, 2016, about unprofessionalism on October 12 with the Falbo's pizza restaurant owner. On October 13 the pizza restaurant owner served lunch in the cafeteria and the claimant approached the owner while he was serving lunch and wanted to talk to him about what happened at the restaurant the night before. The owner then contacted the employer about feeling uncomfortable. Fountain told claimant to keep his personal business outside of work. On October 11, 2016, Fountain and Stacey Harney had a counseling meeting with

claimant about not having tolerance for disrespectful conversations in the break room as had occurred that day.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

#### **Causes for disqualification.**

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 individual shall be disqualified for benefits 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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Since others have also been warned for similar conduct, disparate application of the

policy is not evident. The employer has presented substantial and credible evidence that claimant discussed personal business at work, causing disruption, after having been warned. This is disqualifying misconduct.

**DECISION:**

The April 18, 2017, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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