

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**NEIL TAYLOR**  
Claimant

**DALL-HAUS INC**  
Employer

**APPEAL 16A-UI-09578-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/24/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 23, 2016, (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on September 20, 2016. The claimant participated personally. The employer participated through Mike Dreesman, area manager. Claimant exhibit A was received into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a shift leader and was separated from employment on July 27, 2016, when he was discharged.

The final incident occurred on July 21, 2016, when the claimant was working. It was reported by a customer, who used the claimant by name, that he was observed yelling at employees in the presence of customers near the dessert area. The claimant did not remember yelling but acknowledged he had a direct and abrupt manner sometimes in trying to communicate with his subordinate employees. As a result of the complaint, the employer confronted the claimant the next day and told him that he needed to change his approach and behavior. The claimant indicated that such a goal was unattainable for him and that he could not or would not change. The employer determined that based on the claimant's behavior and then his subsequent response to the reprimand, that he would be discharged.

Prior to discharge, the claimant had on several occasions had incidents of losing his temper in a management role, both as a shift leader and previously as an assistant manager. Specifically, there were two incidents in April 2016 that triggered the claimant being demoted to a shift leader. On April 23, 2016, the employer learned the claimant had yelled and lost his temper at

employees to a degree that resulted in a newly hired employee quitting, refusing to work with the claimant. Then the next day, the claimant again became frustrated, and lost his temper again in front of employees, going so far as to smash his head into a towel dispenser.

### **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 § 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 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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The credible evidence presented is that the claimant was in a leadership and management role throughout the time of his employment. Management and leaders are held to a higher standard of care inasmuch they are expected to know and enforce employer policies. Generally,

continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The claimant in this case had been repeatedly counseled about his temper and demeanor in the workplace inasmuch as the claimant caused a newly hired employee to quit after the claimant lost his temper on April 23, 2016. Then on April 24, the claimant again lost his temper with employees and during the episode, smashed his head against a towel dispenser. Then on July 21, 2016, a customer complained to the employer about observing the claimant yelling at employees in the presence of the customers. The claimant was confronted by the employer and rather than apologizing, he defended his actions as being the way he was, and did not accept responsibility. The administrative law judge is persuaded the claimant conducted himself unprofessionally on July 21, 2016, when a customer complained about viewing the claimant yell at employees at the workplace. Even in the absence of a first-hand witness, the administrative law judge is persuaded more likely than not, the claimant did act in a way that was contrary to prior warnings from the employer.

Further, when the claimant was asked to change his interaction, he did not accept responsibility but refused, declaring the directive unreasonable. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The employer gave the claimant ample opportunity to address the way he interacted with employees, before moving to discharge. No employee should have to be subject to management outbursts for any reason. The employer arguably more forgiving than most employers would be given the claimant's conduct. When the employer told the claimant his continued conduct was unacceptable, the claimant responded that the employer's expectations were unachievable. The employer has a responsibility to protect its employees from abusive language as well as maintain good customer service, which includes employees not yelling at other employees at the workplace. The claimant did not provide persuasive testimony to support why he could not or should not try to work on his temper, and how he interacted with employees. Consequently, the administrative law finds the claimant's response to the employer's meeting, in conjunction with his conduct on July 21, 2016, was contrary to the best interests the employer has to expect of an employee. Misconduct has been established. Benefits are denied.

**DECISION:**

The August 23, 2016, (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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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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