

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHAEL A HINNENKAMP**  
Claimant

**UTILISOUTH INC**  
Employer

**APPEAL 21A-UI-01213-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Overpayment of Benefits

**STATEMENT OF THE CASE:**

On December 4, 2020, the employer, Utilisouth, Inc., filed an appeal from the November 24, 2020 (reference 03) unemployment insurance decision that allowed benefits based upon a determination that Claimant Michael A. Hinnenkamp was discharged for work and the employer failed to establish that he was discharged for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephonic hearing was held on February 16, 2021. The claimant, Michael A. Hinnenkamp, participated. The employer, Utilisouth, Inc., participated through Ryan Keck, VP of Finance; and Rudy Loving, Supervisor. Employer's Exhibit 1 was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Was the claimant discharged from employment for disqualifying, job-related misconduct?  
Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a laborer, from July 24, 2020, until August 18, 2020, when he was discharged from employment.

Claimant reported to work as scheduled on August 17, 2020. He was dropped off at his apartment for lunch, and after lunch, no one came to pick him up and transport him back to the jobsite. Claimant tried to get ahold of his ride, and he got no response. The following morning, no one showed up to pick up Claimant for work. Claimant tried to call Loving and he did not answer. Then, Claimant tried to call Keck and he did not answer either. Eventually, Loving called Claimant mid-day and discharged him. When Claimant asked for a reason that his employment was ending, Loving told him about the email. (Exhibit 1) Claimant tried to disagree with the email's contents, but Loving said he was not going to argue with him. Claimant denies he had ever been talked to about soliciting drugs or any other issues at work in the past. Claimant denies anyone requested that he take a drug test.

The administrative record reflects that claimant has received no unemployment benefits since filing a claim with an effective date of April 12, 2020. The administrative record also establishes that the employer did not participate in the fact-finding. According to the fact-finding documentation, the fact-finder called a telephone number for the employer that was not the number the employer specifically provided on its Statement of Protest.

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

For the reasons that follow, the administrative law judge concludes Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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.

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).

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.*

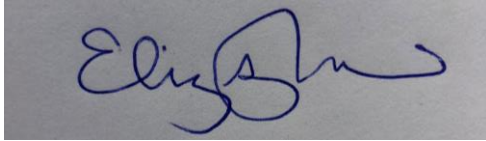
After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds Claimant's testimony the most credible evidence offered during the hearing. The employer's witnesses struggled to testify as to basic employment information, including dates of absences and dates of prior warnings. Further, the employer submitted no documentation of any prior warnings, no documentation of a drug testing request or drug testing policy, and no documentation of an attendance policy. The dates offered by the employer witnesses were inconsistent, and the testimony and reasons given for discharging Claimant were similarly not aligned. When comparing the two versions of events, Claimant's is the more straightforward and clear, and therefore the administrative law judge finds it more credible.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. In this case, Claimant was discharged after the employer received an email accusing Claimant of a variety of nefarious statements and deeds. The employer did not investigate the email or question Claimant about the contents of it to give him an opportunity to defend himself or refute the allegations. Rather, it simply relied fully on the email and ended Claimant's employment. The administrative law judge finds that Claimant was discharged from employment for no disqualifying reason, and benefits are allowed.

As Claimant's separation from employment is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

**DECISION:**

The November 24, 2020 (reference 03) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.



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Elizabeth A. Johnson  
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February 26, 2021  
Decision Dated and Mailed

lj/mh