

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LYLE VANCE
Claimant

KWIK SHOP INC
Employer

APPEAL 21A-UI-23005-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/05/21
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Lyle Vance, filed an appeal from the October 11, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion he was discharged for violating a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on December 8, 2021. The claimant participated and testified. The employer did not call in to the number listed on the notice of hearing and did not participate. Official notice was taken of the administrative record.

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 began working for the employer in January 2019. He was a full-time cashier. He was discharged from employment on September 8, 2021, following a verbal altercation with a customer over the propriety of wearing masks and vaccination. During this exchange, the claimant accused the customer of being a “terrorist” and we were under terrorist attack. Claimant was discharged following this incident.

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:

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.

871 IAC 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.

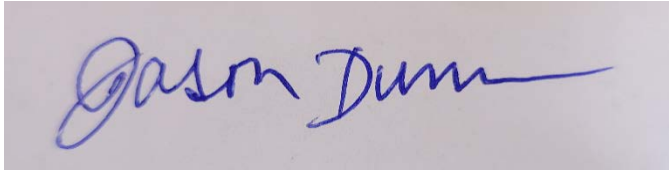
This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). 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). 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 claimant's conduct is deliberate, intentional, and evinces a wanton disregard for his employer's interest. The claimant works at a convenience store where a wide variety of people with a wide variety of opinions shop and get gas. The claimant was vague in expounding on how the altercation with the customer began but he was unapologetic about how he referred to this particular customer and felt that he was justified in his actions. The claimant's refusal to provide any clarifying information regarding the confrontation imputes further strain on his credibility and the employer's customers should not be subject to the opinions of the claimant and his personal beliefs. The claimant's behavior is disqualifying, and benefits are denied.

DECISION:

The October 11, 2021, (reference 01) 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.



Jason Dunn
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January 14, 2022
Decision Dated and Mailed

jd/scn