

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

Claimant

**APPEAL 15A-UI-06003-EC-T**

Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/15**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the May 19, 2015, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on June 26, 2015. The claimant participated. The employer participated. The employer submitted exhibits which were marked as Exhibit E1 to E7 and were admitted into the record without objection.

**ISSUE:**

Was the separation from employment a discharge for misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a day habilitation supervisor from June 10, 2010, until this employment ended on April 29, 2015, when his employment was terminated following a final incident on April 23, 2015. The employer gathered facts before meeting in person with the claimant to terminate his employment.

The pertinent evidence is undisputed. The claimant was informed of a potential dependent adult abuse incident on April 23, 2015. He did not immediately report the matter to his immediate supervisor as he was required to do. He did not immediately report the matter to the Iowa Department of Human Services, as he was required to do. The claimant supervised the individual involved in the reported incident.

On April 24, 2015, the claimant met with his immediate supervisor and the day habilitation director regarding other matters. He did not take this opportunity to report the incident to them at that time.

Later in the afternoon of April 24, 2015, the day habilitation supervisor received notice of the incident from the employee who initially reported it to the claimant. She took immediate action to follow up with the reporting person. She reported the incident to the proper state agencies as required. She then asked the claimant why he had not already reported the incident. He stated

that he was just then in process of composing an email message to his immediate supervisor. He was waiting to report the incident. He was waiting to report the incident through the proper chain of command and to the proper state agencies until he received a written statement from the alleged perpetrator.

The claimant was on a performance improvement plan at the time this incident occurred. He had been previously warned of the importance of reporting any such incident through the proper chain of command and to the proper state agencies. He failed to do so, more than once. (Exhibit E2)

On June 27, 2014, the claimant failed to properly report concerns relating to inappropriate interactions between a staff member and a consumer under his supervision. Then, the claimant received a written warning on September 23, 2014, for insubordination. Then, the claimant received further disciplinary action, a two day suspension, on November 6, 2014, for similar insubordination. (Exhibit E)

The claimant did not take the requirements for reporting incidents seriously, despite the disciplinary actions and despite the extended performance improvement plans. (Exhibit E1)

### **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. Benefits are denied.

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

The employer presented substantial and credible evidence that the claimant failed to follow the proper procedure in reporting a potential dependent adult abuse incident after having been warned. This is evidence of deliberate conduct in violation of company policy, procedure, or prior warning. His repeated insubordination, his failure to perform a basic requirement of his position as a mandatory reporter, despite repeated reminders that such incidents must be immediately reported through a certain process, put the employer's compliance with governing state and federal regulations at risk. The employer's requests were not unduly burdensome or unreasonable. The claimant's repeated failure to properly and accurately perform his job duties after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a. Benefits are denied.

#### **DECISION:**

The May 19, 2015, (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.

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Emily Gould Chafa  
Administrative Law Judge

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Decision Dated and Mailed

ec/pjs