

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LOU A BRYANT**  
Claimant

**MUSCO SPORTS LIGHTING LLC**  
Employer

**APPEAL 16A-UI-02533-H2T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/13/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 23, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 29, 2016. Claimant participated. Employer participated through Julie Sarver, Human Resources Project Manager.

**ISSUE:**

Was the claimant discharged due to job connected 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 custodian from August 20, 2007 through February 3, 2016, when she was discharged. The claimant did not think her supervisor, Ken Eichleber, did a very good job at managing her coworkers. She wanted him to make her co-workers do a better job, stop taking so many cigarette breaks and generally just meet her high quality standards. The claimant was good at her job and performed her job tasks well. However, she had a long history of discipline for talking inappropriately to her coworkers. She had been warned in writing and verbally and had been sent for EAP counseling. The claimant was upset when her coworkers did not perform to meet her expectations and was further upset when her supervisor would not issue discipline to those who were not acting appropriately.

On June 25, 2015 the claimant was given a final written warning for an incident that occurred when she spoke harshly to one of her coworkers and yelled at another one leaving her in tears. The claimant knew at that time that one more outburst would lead to her discharge. The claimant was specifically instructed in writing to let the supervisor discipline coworkers and that she was not to berate them for not performing their job duties to meet her expectations.

On January 22 the claimant went home early with a sore knee. She asked Deb (another custodian) to finish her shift and complete her job duties. The claimant returned to work the next day and sarcastically thanked Deb for completing her duties. Deb told her she had not completed them as she had not had time. The claimant told her she knew she had not

completed them and that she was being sarcastic. The claimant was not present in the workplace and determined that even after she left Deb should have been able to complete her own job duties and the claimant's. Linda, another coworker, was present and the claimant then began to yell at Linda and to repeatedly call her a liar and to comment to her that "people who go to church should not lie." The claimant's coworkers complained to human resources who began an investigation. The claimant admits to making a sarcastic comment to Deb but denies she yelled. She does admit to calling Linda a liar one time during the conversation. The claimant was not allowed to violate the employer's policies even if her supervisor did not supervise in the manner she deemed to be most appropriate. Because the claimant had several prior warnings for similar conduct and because she had been placed on a final written warning for the same type of behavior, six months before, she was discharged.

### **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).

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). 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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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).

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.*

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The employer had a right to expect the claimant to treat her coworkers in a respectful manner. While the claimant may not have agreed with how they performed their job duties, it was not within her authority to discipline them or to chastise them for failing to meet her expectations. The employer gave the claimant repeated warnings and chances to change or improve her behavior, including sending her to employee assistance counseling. The claimant's final actions on January 22 were a violation of the employer's code of conduct and in violation of the claimant's final warning for the same behavior. Disqualifying misconduct has been established. Benefits are denied.

**DECISION:**

The February 23, 2016, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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