

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JASON PRIDEG**  
Claimant

**ATC INC**  
Employer

**APPEAL 21A-UI-12856-SN-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 12/13/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

On May 25, 2021, the employer, ATC INC, filed an appeal from the May 20, 2021, reference 01, unemployment insurance decision that granted benefits based upon the conclusion he was discharged but willful work-related misconduct was not shown. The parties were properly notified of the hearing. A telephone hearing was held on August 2, 2021. The claimant did not participate. The employer participated through Human Resources Manager Brittany Phillips. Exhibits 1, 2 and 3 were received into the record. Official notice was taken of the agency records.

**ISSUES:**

Whether the claimant's separation was disqualifying?

Whether the claimant has been overpaid benefits? Whether the claimant is excused from repaying benefits due to the employer's non-participation at fact finding?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as a body shop tech from September 1, 2020, until this employment ended on December 15, 2020, when he was terminated. The claimant's immediate supervisor was Body Shop Supervisor Jonathan McClure.

On November 5, 2020, the claimant received a second written notice from Mr. McClure. The employer provided a copy of the second written notice. (Exhibit 1) On the notice, Mr. Phillip wrote, "Your quality of work is not up to our standards – every paint job you performed required additional work to make the job acceptable. Additionally your attitude toward being told your work is sub-standard is representative of someone who doesn't take pride in his work. Failure to improve will result in termination." The employer also provided Mr. McClure's notes from the

meeting. (Exhibit 2) In his notes, Mr. McClure wrote that the claimant took responsibility for the issues that he had been having and “seemed optimistic that he [could] get his skills back up to speed.”

On December 16, 2020, Mr. Phillip terminated the claimant. The employer provided a copy of the termination notice he received on that day. (Exhibit 2) The termination notice begins by reminding the claimant he received a second notice regarding his performance and behavior on November 5, 2020. It then concludes that the claimant would be terminated because he has not improved under either category since then.

Ms. Phillip said she did not know what behavior or performance spurred Mr. Phillip to conclude the claimant should be terminated. She did not have any personal knowledge or experience to say whether the claimant had ever performed to the employer’s satisfaction. Ms. Phillip said Mr. Phillip could not testify because he was at another location catching up on business. The administrative law judge attempted to call Mr. McClure, but he was on lunch.

The following section describes the findings of facts regarding the overpayment participation issue:

The claimant filed for benefits on December 13, 2020. The claimant did not receive any benefits because he has not verified his identity. Ms. Phillip did not receive a call from Iowa Workforce Development regarding the claimant’s claim. The administrative records KFFV and KFFD do not show a fact finding was conducted.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. The administrative law judge further concludes the claimant has not been overpaid benefits because he has not been paid benefits.

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).

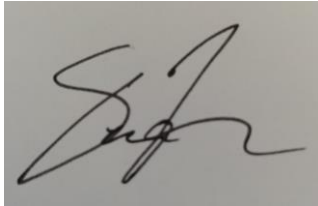
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). 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).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986). Since the employer did not present any testimony based on first-hand knowledge and experience that claimant had previously performed his job duties to employer's satisfaction, no intentional misconduct has been established, as is the employer's burden of proof. While it is true the second notice and termination notice state the claimant had an attitude reflecting he did not have pride in his work, these observations are too vague to find that the employer has met its burden, especially given that the author was not made available to testify. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed. The overpayment issue is moot because the claimant's separation is not disqualifying and he has not received benefits.

**DECISION:**

The May 20, 2021, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink on a light gray background. The signature is stylized and appears to read 'S. Nelson'.

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Sean M. Nelson  
Administrative Law Judge  
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August 5, 2021  
Decision Dated and Mailed

smn/mn