

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VERNARD WHITLEY
Claimant

HOMEMAKERS PLAZA INC
Employer

APPEAL 21A-UI-03783-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/06/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant, Vernard Whitley, filed an appeal from the January 21, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 30, 2021. The claimant participated personally. The employer participated through Wendy Mesenbrink. Tim Banta testified.

The administrative law judge took official notice of the administrative records. Claimant Exhibits A and B were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 was employed full-time as a receiving associate and was separated from employment on December 4, 2020, when he was discharged for insubordination.

Claimant was trained on employer rules and procedures. Employer stated claimant had raised issues regarding lead members asking him if he needed additional training with the job. When claimant stated no, employer began holding claimant accountable for his productivity, based upon established production levels. On November 16, 2020, claimant was issued a written warning for being at 82% of the production rate, by way of a “documentation of expectations”, which he refused to sign.

Claimant was issued a second written warning on December 1, 2020 when his production rate dropped to 62%. Claimant refused to sign that warning as well. Claimant presented employer a doctor’s note on December 1, 2020 which requested flexibility in his personal restroom breaks

due to a medical condition (Claimant Exhibit B). Employer accommodated claimant's request and does not restrict restroom breaks.

On December 4, 2020, claimant was observed three separate times by manager, Tim Banta, standing and talking to other employees. Given claimant's production rate, Mr. Banta confronted the claimant each time. The third time, claimant became argumentative, raising his voice, questioning Mr. Banta's authority and refusing to work. Mr. Banta left the conversation, reviewed his concerns with human resources and the decision was made to discharge claimant.

Upon claimant learning of his discharge, he flung open the door and began yelling, called his mother on speakerphone and demanded Mr. Banta explain to her "why he was going to be homeless" and threatened to obtain counsel.

Prior to claimant's first warning, he had bypassed the chain of command and went to the CEO to complain about management. Claimant opined that his job performance was not at issue until he complained and implied he was targeted by the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying job-related misconduct.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

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. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer’s request in light of all circumstances and the employee’s reason for noncompliance. *Endicott v. Iowa Dep’t of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

In this case, claimant had been warned that his performance was below the employer’s production expectations twice before discharge. While the administrative law judge recognizes the claimant had a medical condition which may have contributed to him needing to visit the restroom more often at times, the credible evidence presented is that on December 4, 2020, on three separate occasions, employer observed claimant loitering and talking with employees, rather than performing work. Once confronted, claimant was argumentative with the employer. Cognizant that claimant felt he was being targeted, the credible evidence is claimant had a pattern of insubordination, by way of refusing to sign both warnings, by loitering instead of working, and being argumentative with management when confronted. The administrative law judge is persuaded the claimant knew or should have known his conduct on December 4, 2020 was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct. Benefits are denied.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The unemployment insurance decision dated January 21, 2021, (reference 01) is affirmed. The claimant was discharged for disqualifying 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.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

April 02, 2021
Decision Dated and Mailed

jlb/ol

NOTE TO CLAIMANT:

This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:

www.iowaworkforcedevelopment.gov/pua-information

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>