

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SERGEPAUL SOMOMBING**  
Claimant

**IOWA STAFFING INC**  
Employer

**APPEAL 19A-UI-10177-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/01/19**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

On December 23, 2019, the employer filed an appeal from the December 20, 2019, (reference 03) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on January 21, 2020. Claimant participated personally and through Interpreter 11640 with CTS Language Link. Employer participated through office manager Alejandra Rocha. Employer's Exhibits 1 through 5 were received.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer is a temporary staffing firm. Claimant was last assigned to work at full-time hours at Marzetti Frozen Pasta in Clive, Iowa, from October 10, 2019, until the assignment ended on November 25, 2019.

Employer has a policy prohibiting insubordination and providing for progressive discipline. Claimant was aware of the policy.

Claimant's native language is French, but he tests at a Level 4 level in English proficiency.

On October 24, 2019, employer gave claimant a verbal warning about being rude to co-workers and other issues in the workplace.

Claimant worked on a production line at Marzetti Frozen Pasta. The workers are supposed to rotate positions every 30 minutes.

On November 25, 2019, claimant became frustrated with his line lead, Martha, because of the way she was rotating the workers. Claimant screamed, "Discrimination!" at Martha. Another employee, Peter, became involved and had to calm claimant down. Claimant had never previously complained to employer about discrimination at Marzetti Frozen Pasta.

On November 25, 2019, Marzetti Frozen Pasta asked employer to end claimant's assignment.

On November 25, 2019, office manager Alejandra Rocha spoke with claimant on the phone and informed him the assignment at Marzetti Frozen Pasta had ended. Rocha believed claimant understood he was not supposed to return to the assignment the next day. Rocha had not yet decided whether claimant was eligible for reassignment.

The next day, on November 26, 2019, claimant appeared for work at Marzetti Frozen Pasta. Marzetti Frozen Pasta told claimant the assignment ended and would not let him through the door. Claimant saw an Iowa Staffing employee who gave him a ride home. Claimant submitted a written complaint of discrimination regarding the working conditions at Marzetti Frozen Pasta. Employer reviewed the complaint and concluded it was unfounded.

On November 26, 2019, employer decided claimant was not eligible for reassignment because of his behavior at Marzetti Frozen Pasta.

Claimant has not received any unemployment insurance benefits since this employment ended.

#### **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 § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 is not 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).

In this case, claimant was terminated after raising his voice and behaving belligerently in the workplace. Although the administrative law judge finds that claimant's return to the assignment on November 26 may have been due to a language barrier, that does not excuse claimant's self-described conduct of "screaming" the word "discrimination" at his supervisor the day before. Even if claimant believed he was being discriminated against, he could have handled his complaint in a professional manner. Every reasonable person knows screaming at a supervisor is not accepted in the workplace. Claimant had been previously disciplined for being rude to co-workers.

Employer established claimant was terminated for being rude and belligerent in the workplace after having been previously warned regarding the same behavior.

Claimant has not received any benefit payments since filing this claim for unemployment insurance benefits. Therefore, the issues regarding overpayment of benefits are moot and will not be discussed further in this decision.

**DECISION:**

The December 20, 2019, (reference 03) unemployment insurance decision is reversed. 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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Christine A. Louis  
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January 23, 2020  
Decision Dated and Mailed

cal/scn