

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**FABIAN REYES**

Claimant

**APPEAL 20A-UI-06577-J1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERIDIAN MANUFACTURING INC**

Employer

**OC: 04/12/20**

**Claimant: APPELLANT (1)**

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

**STATEMENT OF THE CASE:**

On June 20, 2020, the claimant filed an appeal from the June 11, 2020, (reference 01) unemployment insurance decision that denied benefits based on conduct not in the employer's interest. The parties were properly notified about the hearing. A telephone hearing was held on July 23, 2020. Claimant participated and was represented by his wife, Chanthala Soumetho. Employer participated through Marla Smith, Human Resources Manager, Brittany Bauman, Environment Health and Safety Manager and Kevin Bergen, Operations Supervisor. Exhibit A was admitted into the record.

**ISSUE:**

Did claimant commit job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 25, 2016. Claimant last worked as a full-time welder. Claimant was separated from employment on March 17, 2020, when was fired for coughing.

On March 13, 2020 the claimant was in attendance at a safety meeting at work that discussed Covid-19 and how it is spread and how the employer and employee were to take steps to minimize exposure, which included social distancing and covering coughs. (Ex. A) On March 13, 2020 claimant was returning from lunch and was to go to another safety meeting. Claimant was near Ms. Bauman and coughed in the air, without covering his mouth in the direction of Ms. Bauman. Claimant said he was three to four feet away. Ms. Bauman told claimant he could be written up for that conduct. Mr. Bergen was present and told claimant to go home for the day. Claimant returned to work on March 17, 2020. Claimant had a meeting with Ms. Smith and Mr. Bergen. Claimant was asked about the incident and initially said that he was not used to covering his mouth. Claimant then said he coughed to get a "rise" out of the guys. (Ex. A, p. 2: Claimant's testimony)

Claimant was then discharged. The Employee Disciplinary Report Form stated, "Insubordination, disrespect of manager and fellow employees by coughing right into a manager's face, not following protocol, putting everyone in danger of disease." (Ex. A, p. 6)

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

Iowa Code section 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 disqualification shall continue 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).

I find the employer has met its burden of proof that claimant committed job related misconduct. Claimant attended the March 13, 2020 safety meeting and was informed about Covid-19 and how serious the employer was taking the issue to protect the safety of employees. While claimant may have meant the cough as a joke, it went too far. It endangered at least one other employee. His actions were a deliberate disregard of the substantial interest of the employer.

**DECISION:**

**Regular Unemployment Insurance Benefits Under State Law**

The June 11, 2020, (reference 01) unemployment insurance decision is affirmed. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

**Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act**

Even though claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. This decision does not address when claimant is eligible for PUA. For a decision on such eligibility, claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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 under state law 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.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-informatio>



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James F. Elliott  
Administrative Law Judge

July 31, 2020  
Decision Dated and Mailed

je/scn