

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DAVID G BOLDEN**  
Claimant

**PEOPLEREADY INC**  
Employer

**APPEAL NO. 17A-UI-11994-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/22/17  
Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated November 15, 2017, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 3, 2018. Claimant participated personally. Employer participated by Amanda Tyler. Claimant's Exhibit A was entered into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 30, 2017. Employer discharged claimant on August 30, 2017, because claimant walked off the job on that date after he was upset that he wouldn't be getting paid mileage for driving people to the incorrect assignment to do flagging work.

Employer stated that claimant was driving a number of workers to a worksite, but thought that work was at a different location than it was. All other groups went to the correct location. Employer stated claimant called employer and requested that he be paid for the additional mileage to get from the incorrect location to the correct location. Employer demurred and claimant walked off. Claimant had no contact with employer for a week and a half. Claimant had been removed from employment lists when he started texting and calling employer and asking for new placements a week and a half after not working.

Claimant stated that he upset a representative for employer by taking a job from her son. As a result, a friend of that representative was mean and insulting to him. Claimant additionally stated that he worked all day on the date in question and that he didn't walk off of the job. Claimant additionally stated that he tried to call into employer throughout all of the next week, although he did not provide documentation of any of those attempts.

## 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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

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 Ct. 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. *State v. Holtz*, 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. *State v. Holtz*, Id. In this matter, the administrative law judge determines employer's testimony to be more credible than that of claimant. Whereas claimant provided documentation of his attempts to contact employer ten days after his last day of work, there was no evidence shown as to any attempts to contact in the interim. This lends credibility to employer's testimony that claimant just left work. If claimant had been called insulting names by employer, he could have spoken to others regarding the incident. He did not. Additionally, claimant's statement that he was ignored in his requests for jobs – over a week later – makes more sense when considered in light of employer's statement that he'd been removed from the payroll.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning walking off of the job.

The last incident, which brought about the discharge, constitutes misconduct because an employer is not expected to retain workers who walk off the job and don't contact for a week when they don't get their way. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated November 15, 2017, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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