

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SEBASTIAN K REYES
Claimant

AXIOM GRAYS LAKE LLC
Employer

APPEAL 21A-UI-19833-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/18/21
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

On September 8, 2021, the employer filed an appeal from the September 2, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 29, 2021. Claimant, Sebastian Reyes did not register for or participate in the hearing. Employer participated through ADP representative Roxanne Rose and witnesses Barbara Ditzenberger Vice President of Human Resources and Joshua Kennedy, Regional Manager. Employer's Exhibits 1-5 were offered and admitted. Official notice was take of the administrative record.

ISSUE:

Was the claimant discharged from employment for disqualifying 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 May 10, 2021. Claimant last worked as a full-time maintenance worker. Claimant was separated from employment on July 27, 2021, when he was discharged for not properly notifying his employer of an issue with a tenant's sink. (Emp. Ex. 1). The claimant was given a written warning on July 8, 2021, for numerous issues relating to his job performance. (Emp. Ex. 3) and given a Last Chance Agreement on July 13, 2021, for excessive unexcused tardiness. (Emp. Ex. 4). The written reprimands were clear and directed the claimant to successfully complete assigned tasks, to attend daily morning meetings, and to be punctual. (*Id*) In essence: to do the job he was hired to do. On July 13, 2021, the claimant responded to a work order to repair a clogged sink in a tenant's apartment. (Emp. Ex. 1). The claimant informed the tenant he would return to fix the clogged sink later that day but then forgot. The tenant reached out to management three days later upset and wondering when the issue would be fixed. (*Id*). Following this complaint the employer terminated the claimant.

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 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.

Iowa Admin Code r. 871-24.32 provides in relevant part:

Discharge for misconduct.

(1) Definition

"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.

(4) Report required.

The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established.

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Page 3 Appeal 21A-UI-18891-S2-T 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). 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).

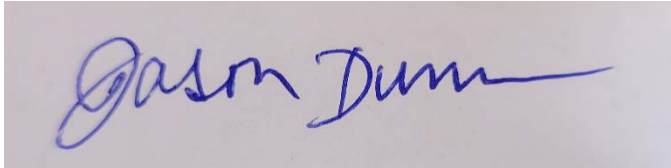
In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability 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.

The employer has met its burden in proving job disqualifying misconduct. The employer has the right to expect their employees to do the jobs they were hired to do. In this case the claimant was provided training and had other co-workers he could rely on to assist him when he was unsure how to handle a maintenance issue. (Emp. Ex. 4). He routinely did not follow through with his job duties in addition to missing daily meetings and being chronically tardy. (Emp. Ex. 2). The claimant evinced a deliberate carelessness and a substantial and intentional disregard towards his job duties and his employer. The claimant's final act of carelessness, not properly handling a clogged sink for a tenant, is the best example of the level of disregard he had for tenants' and his employer. This incident occurred within a week of being reprimanded and warned for poor work performance. The claimant's lack of concern and his repeated inability to perform basic job duties is disqualifying misconduct. The employer provided direct evidence of the claimant's written warning and last chance warning documents each showing the claimant's initials and signatures. (Emp. Ex. 1-5). The employer has met their burden and the claimant was discharged for job disqualifying misconduct.

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.

DECISION:

The decision of the representative dated September 2, 2021, reference 01, is reversed. 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.



Jason Dunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

November 18, 2021
Decision Dated and Mailed

jd/scn

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.