

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOSE M NUNO**  
Claimant

**CONSUMERS SUPPLY DISTRIBUTING LLC**  
Employer

**APPEAL 18A-UI-07010-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/03/18  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 25, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 17, 2018. Claimant participated personally and through Interpreter 10118 with CTS Language Link. Claimant was represented by attorney Dennis McElwain. Employer participated through human resource manager Cecily Johnston. Employer's Exhibits 1 through 7 were received.

**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: Claimant began working for employer on February 29, 2016. Claimant last worked as a full-time packager. Claimant was separated from employment on June 6, 2018, when he was terminated.

As a packager, claimant was responsible for all aspects of packaging tubs of cooked molasses. Claimant was required to adhere to employer's standard operating procedures, which included quality control checks. Every half hour, claimant was required to check the weight of a tub on a computer screen and record the weight onto a quality control report. Claimant was also required to check that the lot number was properly printed on the tub. Claimant was required to record his verification of the lot number on the quality control report. Claimant was aware of these job requirements.

Claimant worked from 6:00 p.m. on June 5, 2018, until 6:00 a.m. on June 6, 2018. At approximately 10:45 p.m., the printer for the lot numbers stopped working correctly and was not printing lot numbers on the tubs. Claimant did not check that the lot number was being printed on the tubs from at least 10:45 p.m. until 12:00 a.m. However, claimant recorded on the quality control report that he verified the lot number at 11:00 p.m., 11:30 p.m., and 12:00 a.m. At about 12:30 a.m., claimant realized the lot number was not printing on the tubs and reported the issue

to his supervisor. The supervisor notified upper management of the issue. Upon review of the situation, upper management realized claimant completed three entries on the quality control report that were inaccurate.

Claimant had been disciplined for failing to follow the required quality control check procedures on three previous occasions.

### **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.

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). What constitutes

misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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 does not constitute 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 did not complete his quality control duties and falsified paperwork in violation of employer's standard procedures. Employer disciplined claimant for similar conduct on three previous occasions. Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Claimant's repeated failure to accurately perform his job duties after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a.

#### **DECISION:**

The June 25, 2018, (reference 01) unemployment insurance decision is affirmed. 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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Decision Dated and Mailed

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