

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**DAVID L LAUGHLIN**  
Claimant

**APPEAL NO. 16A-UI-05566-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHENHALL'S STAFFING SERVICES INC**  
Employer

**OC: 04/24/16**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.5-1-j – Separation from Temporary Employer  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Chenhall's Staffing Services (employer) appealed a representative's May 13, 2016 (reference 01) decision that concluded David Laughlin (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 3, 2016. The claimant provided a telephone number for the hearing but could not be reached at the number and, therefore, did not participate in the hearing. The employer participated by Mike Gowdy, Staffing Coordinator.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services with two different companies from March 19, 2015 through February 18, 2016. He did not sign for receipt of an employer handbook. He signed an employment application on January 7, 2014, that contained the employer's policies but he did not receive a copy.

From April 23, 2015 until February 18, 2016, the claimant was assigned to work at Twin City Fan as a laborer. Neither the employer nor Twin City Fan issued the claimant any written warnings. On February 18, 2016, Twin City Fan told the employer they were ending the claimant's assignment because he smoked in the building, took unauthorized breaks, and walked on rails. The employer was not told when the claimant did these things. Twin City Fan told the employer they issued the claimant verbal warnings but did not indicate the dates of the warnings. On February 18, 2016, the employer terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of April 24, 2016. The employer participated personally at the fact-finding interview on May 12, 2016 by Amy Mitchell.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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(1)a and (8) 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).

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a date of a final incident of misconduct or that the claimant had been issued a written warning.



An employer may discharge an employee for any number of reasons or no reason at all but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's May 13, 2016 (reference 01) decision is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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