

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JASON M BACKENS**  
Claimant

**COOPERATIVE ENDEAVORS INC**  
Employer

**APPEAL 16A-UI-09708-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/17/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 23, 2016, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 28, 2016. Claimant participated. Employer participated through attorney Brandon Gray, special projects manager/sales manager John Hansen, and owner Leslie Reese. Employer exhibit one was admitted into evidence with no objection. Claimant was not available when the documents were initially attempted to be delivered by the post office and when claimant went to go pick up the documents he was informed that they had been already sent to be returned. Claimant did not object to the documents coming into evidence.

**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 was employed full-time as an outside sales representative for Johnstone Supply from January 16, 2012, and was separated from employment on July 22, 2016, when he was discharged.

The final incident that led to discharge occurred on July 20, 2016. On July 20, 2016, claimant had a meeting with a corporate representative. Claimant was aware of the importance of this meeting. Mr. Hansen and Ms. Reese were also present for the meeting. At least a week prior to July 20, 2016, Mr. Hansen told claimant to have a ten-minute presentation prepared to discuss himself, the business, and his role in the business. Claimant had access to the information that was required to be in the presentation. At the meeting, claimant did not have anything prepared for his presentation and only responded to questions from the corporate representative. Employer Exhibit One. Claimant was not able to discuss any new prospecting accounts he was looking for. Employer Exhibit One. As an outside sales representative, claimant was supposed to be prospecting for new accounts. On July 22, 2016, the employer discharged claimant.

On July 14, 2016, the employer created a development plan that was put in place to detail that the employer needed to see some changes by claimant. Employer Exhibit One. Claimant was also given a written warning for driving the company vehicle outside of his regular route on July 13, 2016. Employer Exhibit One. Claimant was warned that his job was in jeopardy. Employer Exhibit One. Prior to July 13, 2016, the employer decided to use the transfer process to get the product. Claimant was not supposed to go to Cedar Rapids to get the product. On July 13, 2016, claimant went to Cedar Rapids and got a different product for the same customer without checking with the employer. Claimant also received a written warning on July 1, 2016 for removing confidential information off of a coworker's desk. Employer Exhibit One. Claimant was warned that his job was in jeopardy. Employer Exhibit One.

On May 27, 2016, claimant participated in a webinar as a listener (Mr. Hansen also participated as a listener). The owner requested specific feedback from claimant and Mr. Hansen about what was covered in the webinar. Employer Exhibit One. The employer reminded claimant he needed to provide feedback, but he still did not respond. Employer Exhibit One. The week of May 9, 2016, Mr. Hansen left a list of tasks for claimant to complete during the week. Employer Exhibit One. Claimant only completed 33% of the requested items. Employer Exhibit One. Mr. Hansen testified it was possible for claimant to complete more than 33%. In February 2016, the employer put in place Smart Goal Program for claimant. Employer Exhibit One. The Smart Goal Program identified three topics of areas that the employer would like to see claimant improve in to be a better sales person. Claimant did not comply with the program. Employer Exhibit One. Mr. Hansen asked claimant to do the daily call sheets. Claimant stopped doing the call sheets after a couple weeks because he was doing computer entries which he thought was more than sufficient.

#### **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. Benefits are denied.

It is the duty of an administrative law judge and 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, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa 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*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; whether a witness has made inconsistent statements; the witness's 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*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit that was admitted. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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 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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer is also entitled to expect its employees to follow its instructions in performing their job duties. The final incident that led to discharged occurred when claimant failed to follow the employer's instructions to prepare a presentation for his meeting with the corporate representative on July 20, 2016. The employer presented credible testimony that claimant was instructed to have a presentation prepared about himself, the business, and his role in the business. Claimant did not prepare a presentation for the meeting and was

unprepared to answer some of the questions regarding his accounts or prospective accounts. Claimant had prior written warnings, including for a driving outside of his sale area without informing the employer and taking a confidential flyer from a coworker's desk. Claimant also failed to comply with the SMART Goal program, complete the tasks he was given for May 9, 2016, and follow up with the owner after he was instructed to provide the owner feedback about a webinar.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The employer has presented substantial and credible evidence that claimant failed to follow reasonable instructions and prepare a presentation on July 20, 2016 after having been warned. This is disqualifying misconduct.

**DECISION:**

The August 23, 2016, (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. 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.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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