

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MEECHUM T DEBOW
Claimant

BLAZIN WINGS INC
Employer

APPEAL 17A-UI-03521-DL
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/05/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 23, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. After due notice was issued, a hearing was held on May 16, 2017, in Cedar Rapids, Iowa. Claimant participated. Employer participated through house manager Abby Hollingshead. Jackie Boudreaux of ADP represented the employer.

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 as a part-time team member from August 2016, through February 28, 2017. On that date Hollingshead gave him permission to wear ear buds during preparation work and portioning until 11 a.m. He did not remove them at 11 a.m. because he became busy with orders. Hollingshead asked him to take his ear buds out while on the line because they are a potential food contaminate. He refused so she asked him again. He said her priorities were skewed and said there was stagnant water under the sink. She told him to clock out and go home. He turned to another manager Stephanie Pace who told him that they could continue the conversation at a more appropriate time. Claimant argued with and pointed his finger at Pace out of frustration. There were at least four other people in the kitchen who could have covered for claimant while he took the time to remove his ear buds, wash his hands and put clean gloves on in order to resume working.

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:
Causes for disqualification.

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).

Even though the ALJ questions why ear buds are not a potential food contaminate during food preparation but are during cooking, the employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant repeatedly refused to follow Hollingshead's instructions to remove his ear buds. His excuse of being busy does not overcome the insubordination since there were others to cover for him, which was Hollingshead's responsibility and not his. Claimant's deliberate and argumentative failure to follow Hollingshead's instruction is disqualifying misconduct, even without prior warning.

DECISION:

The March 23, 2017, (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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/scn