

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALAN A MAGNANI**  
Claimant

**APPEAL NO. 11A-UI-16324-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WESLEYAN COLLEGE**  
Employer

**OC: 11/20/11**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Alan Magnani filed a timely appeal from the December 16, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 24, 2012. Mr. Magnani participated personally and was represented by attorney Jennifer Smith. Iowa Wesleyan President Jay Simmons represented the employer and presented additional testimony through Vice President and Dean of Students Linda Buchanan, Director of Human Resources Kathy Moothart, and Senior Vice President and Chief Financial Officer Phyllis Whitney. Exhibits Two through Five were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Alan Magnani was employed by Iowa Wesleyan College as Head Men's Basketball Coach until November 23, 2011, when President Jay Simmons discharged him from the employment. Coach Magnani had been with the College since 1995 and had been Head Men's Basketball Coach since 1996. President Simmons had joined the college in 2008.

On October 14, 2011, President Simmons met with the college's coaches to notify them of the Board of Trustees' decision to pursue membership with the NCAA's Division III. President Simmons and the Trustees were concerned about athlete retention rates and about the disparity between the scholarship packages awarded to athletes and non-athletes. The athletes could qualify for a two-thirds discount on the cost of attendance, while non-athletes could only qualify for a one-third discount. President Simmons and the Trustees concluded it would be in the college's interest to transition to a non-scholarship based athletics program and to award all financial aid based on academic merit and financial need.

Coach Magnani did not support the decision to pursue membership with the NCAA's Division III because of the negative impact it would have on athlete financial aid, athlete recruitment and

the overall quality of the Iowa Wesleyan men's basketball program. Switching from membership in the National Association of Intercollegiate Athletics (NAIA) to the NCAA's Division III would bring with it elimination of athletic scholarships.

On October 26, 2011, Senior Vice President Phyllis Whitney held meetings with the coaching staff and others to discuss necessary changes to student financial aid packages in light of the need to comply with NCAA Division III requirements, should the college's bid for membership succeed. Coach Magnani was on campus performing other duties, but did not attend the meeting. On October 30 or 31, Vice President Buchanan told Coach Magnani that it had been unacceptable for him not to attend the October 26 meeting and that President Simmons considered this his "second strike."

On November 11, 2011, the Saint Louis Intercollegiate Athletic Conference (SLIAC) Administrative Council visited the Iowa Wesleyan campus to speak to coaches and other college representatives as part of the process of assessing whether Iowa Wesleyan should be granted NCAA Division III membership. Coach Magnani and other coaches provided candid comments regarding their concerns about proposed NCAA Division III membership. SLIAC then voted on Iowa Wesleyan's admission into the conference and Iowa Wesleyan came up one vote short. President Simmons learned that the lack of necessary votes was attributable at least in part to the candid comments of the Iowa Wesleyan coaches during the November 11 meeting.

On November 18, 2011, President Simmons met with the coaching staff and presented each coach with an ultimatum: submit a letter in support of joining the NCAA's Division III or submit a letter of resignation. President Simmons imposed a November 22, 5:00 p.m. deadline. Everyone except for Coach Magnani submitted a letter of support. Coach Magnani concluded he could not in good conscience submit such a letter when he did not in fact support the bid for NCAA Division III membership or think that such a move was in the interests of the men's basketball program.

On November 23, President Simmons and Vice President Buchanan met with Coach Magnani to discharge him from the employment. Coach Magnani told them that he had been a loyal employee for 16 years. Coach Magnani told them that though he did not feel he could lie by submitting a letter indicating support, he had intended to continue to perform his duties as expected regardless of whether Iowa Wesleyan joined the NCAA's Division III. This response was not satisfactory to President Simmons, who ended the employment.

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

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.

871 IAC 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The weight of the evidence establishes that President Simmons reasonably expected Coach Magnani to cooperate with the Trustees' decision to move Iowa Wesleyan College from membership in the NAIA to membership in the NCAA's Division III. However, the heavy-handed method President Simmons employed to secure Coach Magnani's cooperation and support were not reasonable. The weight of the evidence indicates that both men were motivated by a desire to best serve the interests of Iowa Wesleyan College. Coach Magnani was the long-time Head Men's Basketball Coach and had invested 16 years of his career in building the men's

basketball program at Iowa Wesleyan. Coach Magnani reasonably concluded that the switch to NCAA Division III membership would degrade the quality of the men's basketball program and other athletic programs at Iowa Wesleyan. The evidence indicates that Coach Magnani was motivated by a desire to serve his student players, the men's basketball program, and Iowa Wesleyan. Coach Magnani's expression of a professional opinion on the proposed change in athletics conference did not amount to insubordination. Nor was it in willful or wanton disregard of the employer's interests. The weight of the evidence establishes that the discharge was based not on refusal to cooperate with the transition to NCAA Division III membership, but rather on a refusal to provide a document that served little purpose other than to indicate submission to President Simmons' authority.

Though it was within the employer's discretion to discharge Coach Magnani from his employment, the evidence does not establish misconduct in connection with the employment that would disqualify Coach Magnani for unemployment insurance benefits. Mr. Magnani was discharged for no disqualifying reason. Accordingly, Mr. Magnani is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Magnani.

**DECISION:**

The Agency representative's December 16, 2011, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs