

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**WHITNEY SMITH**  
Claimant

**ADVANCE SERVICES INC**  
Employer

**APPEAL 20A-UI-12810-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/09/20  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 6, 2020, (reference 02) unemployment insurance decision that denied benefits based upon her discharge for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on December 16, 2020. The claimant, Whitney Smith, participated and testified. The employer, Advance Services, Inc., participated through Melissa Levine. Employer's Exhibits 1-3 were admitted.

**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 from July 6, 2020, until August 10, 2020, when she was discharged from employment. Claimant was placed at Cardinal Glass and worked as a picker.

This employer has written work rules in place which could lead to corrective action, up to and including discharge. Violations of the work rules include hitting or shoving an individual, engaging in verbal or physical abuse of others, harassment, and threatening or intimidating behavior. Claimant signed an acknowledgment that she read and understood the work rules. (Exhibit 2).

The final incident leading to discharged occurred on August 10, 2020. Claimant and an employee named Emma argued as they worked together because they did not get along with each other. When Emma walked past claimant with a cart, claimant kicked the cart and pushed it into Emma, causing her to stumble. (Exhibit 3). Approximately 30 seconds later, claimant walked up to Emma, pointed her finger at her face, and called her a cunt. The employee reported the incident and Cardinal Glass staff removed claimant from the work site. Claimant does not dispute the facts and testified she did not physically harm Emma.

The job site notified employer that claimant's assignment had ended. Employer left a voicemail for claimant notifying her that the assignment had ended. Claimant did not contact employer. Employer terminated claimant for violating the work rules.

Prior to claimant's termination she had not received any disciplinary notices.

### **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:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *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). The Iowa Court of Appeals found substantial evidence of misconduct in

testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). 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). 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).

Employers generally have an interest in protecting the safety of all of its employees and invitees and protecting them from verbal or physical assault. The employer has expressed that interest in its policy prohibiting certain conduct and the claimant was aware of the employer's policy. The claimant does not disagree that she kicked the cart and used profanity towards Emma.

Claimant's actions were an intentional and substantial disregard of the employer's interest which rises to the level of willful misconduct. Employer has established that the claimant deliberately disregarded the employer's interest on August 10, 2020. Claimant's conduct is disqualifying even without prior warning. Benefits are denied.

**DECISION:**

The October 6, 2020, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



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Stephanie Adkisson  
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December 29, 2020  
Decision Dated and Mailed

sa/scn