

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TAKEA BURRELL**  
Claimant

**PEOPLEREADY INC**  
Employer

**APPEAL 19A-UI-08901-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/20/19**  
**Claimant: Appellant (2/R)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Takea Burrell (claimant) appealed a representative's November 4, 2019 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Peopleready (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 5, 2019. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

**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 from 2015 through October 18, 2019. He does not remember signing a document indicating he was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The employer was a paperless facility and the claimant did not receive copies of anything he signed.

The employer had always provided the claimant with a driver to worksites. On the claimant's last Thursday of employment, the driver almost hit a semi. The next day the driver drank a pint of alcohol and then smoked marijuana before driving the claimant and other workers to the jobsite. At his earliest opportunity, the claimant reported the situation to his regional manager. The regional manager told the claimant to start driving the group. The claimant reminded the regional manager that he had no license or insurance. The regional manager told the claimant he could drive or ride with the driver. The claimant refused and the regional manager suspended the claimant from work.

The claimant applied for other jobs but no jobs were available. He has no transportation to work.

## REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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 did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. It terminated the claimant for reporting a safety issue. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The issue of whether the claimant is able and available for work is remanded for determination.

**DECISION:**

The representative's November 4, 2019, decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The issue of whether the claimant is able and available for work is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/scn