

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**GEORGE FLOYD**

Claimant

**LINEAGE LOGISTICS LLC**

Employer

**APPEAL 19A-UI-07499-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/04/19**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant/appellant filed an appeal from the September 12, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 15, 2019, at 11:00 a.m. Claimant participated. Employer participated through Margaret Lewis, Regional Human Resources Business Partner. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUE:**

Whether claimant's separation was a discharge 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 full-time warehouse generalist from November 27, 2017 until his employment with Lineage Logistics, LLC ended on July 11, 2019. (Lewis Testimony) As a warehouse generalist, claimant's job duties included general physical labor, housekeeping, and operating a fork lift and pallet jack. (Lewis Testimony)

Between June 19, 2019 and July 11, 2019 claimant lodged four complaints with employer regarding his workplace and co-workers. (Lewis Testimony) Claimant alleged that his life was being threatened by a co-worker with ties to the Mexican cartel and by a co-worker offering him poisoned food. (Lewis Testimony) Claimant also alleged that his automobile was "bugged" and that employer was listening to his conversations. (Lewis Testimony) Employer investigated each of claimant's allegations and found they had no merit. (Lewis Testimony) On July 10, 2019, claimant contacted the police department regarding his concerns, which resulted in the police visiting the work site. (Lewis Testimony) The police investigated claimant's concerns and found there was not sufficient information to proceed further. (Lewis Testimony) Employer became concerned for claimant's well-being and the safety of other employees. (Lewis Testimony)

On July 15, 2019, employer informed claimant that he must complete a mandatory mental health assessment through the employee assistance program (EAP). (Lewis Testimony)

Employer told claimant that completion of the assessment was a condition of claimant's continued employment and that claimant should contact the EAP by 11:00 a.m. the following day. (Lewis Testimony) Effective July 16, 2019, claimant was placed on a leave of absence at employer's request pending claimant's completion of the assessment. (Lewis Testimony) As of the date of the hearing, claimant has not completed the assessment because he believes employer is retaliating against him. (Claimant Testimony) Claimant filed a claim for benefits with an effective date of August 4, 2019.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are denied.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or

disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

Insubordination does not equal misconduct if it is reasonable under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.* 367 N.W.2d 300 (Iowa Ct. App. 1985). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. *Woods v. Iowa Dep't of Job Serv.*, 327 N.W.2d 768, 771 (Iowa 1982).

It is the duty of the administrative law judge, as the trier of fact, 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 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. *Id.* 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 appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's version of events to be more credible than the claimant's version of those events.

Claimant's refusal to complete the mental health assessment was insubordination. Employer requested the assessment because claimant's actions in the workplace caused concerns about claimant's wellbeing and the safety of all employees. Securing the safety of employees is a business necessity. Employer's request was reasonable. Claimant's refusal to complete the assessment was not reasonable. Claimant refused to complete the assessment because he believed employer was retaliating against him. Claimant's refusal to provide the documentation was not in good faith or for good cause. Claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

**DECISION:**

The September 12, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharge due to disqualifying job-related misconduct. Benefits are denied until 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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Adrienne C. Williamson  
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Decision Dated and Mailed

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