

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**RONALD L WILLIAMS**  
Claimant

**APPEAL NO. 18A-UI-11245-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMPLOYERS MUTUAL CASUALTY CO**  
Employer

**OC: 10/14/18  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Ronald Williams (claimant) appealed a representative's November 9, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Employers Mutual Casualty Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 4, 2018. The claimant was represented by Erik Luthens and participated personally. The employer was represented by Maggie White, Corporate Legal Counsel, and participated by Janelle Larson, Talent Management Specialist, and Doug Brinkman, Manager of Field Services. The employer offered and Exhibit 1 was received into evidence.

**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 claimant was hired on June 4, 2018, as a full-time field services specialist. The claimant signed for receipt of the employer's electronic handbook on June 18, 2018. The employer did not issue the claimant any warnings during his employment.

The claimant had two weeks of training at the beginning of his employment regarding the appraisal part of reporting. He had issues with understanding the employer's extensive computer system and finding things on the system. The claimant asked co-workers for help when they were available. The employer did not provide an outline for the position in training and wished he had more training.

Starting on July 13, 2018, the manager of field services (MFS) met with the claimant almost every week to discuss areas of improvement and performance objectives. The claimant improved but not to an acceptable level. He was not timely completing his online hourly training, keeping his computer calendar current, or completing other jobs on time.

At approximately 2:45 p.m. on August 28, 2018, the MFS had a meeting with the claimant to provide ways for the claimant to remedy his work situation. The MFS did not expect the claimant to correct anything because there was nothing the claimant could “fix”. The MFS told the claimant there would be a decision on his employment soon. The first time the claimant heard from the MFS there may be a problem with his employment was at the meeting the week before the August 28, 2018, meeting.

On August 29, 2018, the MFS terminated the claimant for poor performance. The MFS did not know why the claimant was not performing well.

### **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). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. *Huntoon v. Iowa Department of Job Services*, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of his lack of training. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's November 9, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs