

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM SKINNER**  
Claimant

**APPEAL NO: 17A-UI-00114-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 11/20/16**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 22, 2016, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 26, 2017. The claimant participated in the hearing. Joanne Higgins, Human Resources Manager; Nicholas Weime, Assistant Director of Environmental Services; Jonathan Garringer, Supervisor of Custodian Services; and Mary Eggenburg, Benefits Specialist; participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time custodian for The University of Iowa from October 19, 2015 to November 22, 2016. He was discharged for threatening Supervisor of Custodian Services Jonathan Garringer and walking off the job.

On November 22, 2016, the claimant arrived six minutes late. The time clock was in a relatively new office but the claimant had been there before. He discussed his tardiness with Mr. Garringer but the conversation quickly escalated into an argument and Mr. Garringer did not want to continue the discussion in front of other employees. He told the claimant to badge in and get to work. The claimant did so but returned to Mr. Garringer and asked why he had to clock in as tardy and Mr. Garringer stated because he was tardy. The claimant became irate and used profanity. He accused Mr. Garringer of purposefully trying to confuse him and stated he did not know how to get into the new children's hospital. Mr. Garringer reminded him he had been there the week before. The claimant continued angrily accusing Mr. Garringer who finally told him he needed to go to work as he was done talking about the incident of tardiness. He told the claimant he could talk to the assistant director of environmental services and the claimant said, "Talk about it my ass." The claimant exited the office and appeared to be going to the University of Iowa Hospitals. Mr. Garringer asked the claimant where he was going and if

he was refusing to work and the claimant stated, "You better quit talking to me if you know what's good for you." At that point Mr. Garringer stopped following and talking to the claimant. Mr. Garringer notified Human Resources Manager Joanne Higgins of the incident when she arrived for work. The employer contacted the safety and security staff and they went to look for the claimant. They deactivated his badge so he could not enter the Children's Hospital as there was concern about his behavior. The claimant had not been located after 90 minutes and Ms. Higgins had the AFSCME steward, Mr. Garringer and the assistant director of environmental services come to her office while they called the claimant to see if they could locate him. They finally reached him on his cell phone. The claimant was still angry and upset about the incident of tardiness and said his blood pressure was high. Ms. Higgins asked the claimant when he left and he said 7:10 a.m. The claimant was so irate that Ms. Higgins decided to end the conversation. They called him back at 2:00 p.m. and the claimant immediately became loud in talking about the incident of tardiness. The union representative attempted unsuccessfully to get the claimant to listen to the fact the employer was trying to tell him it was not as concerned about the incident of tardiness as it was the threat to Mr. Garringer and walking off the job. The claimant continued talking about the incident of tardiness and the union representative reminded the claimant it was his responsibility to clock in on time. The claimant refused to calm down and after 25 minutes the employer stated it would contact the claimant later that afternoon and ended the meeting. After discussing the matter internally the employer called the claimant back and notified him it was terminating his employment.

On May 17, 2016, the claimant received a written warning for no-call/no-show absences May 2 and May 3, 2016. On July 13, 2016, the claimant received a written warning and one day suspension after he admitted he was out of his area and failed to routinely do his job. On September 22, 2016, he received a written warning and three day suspension for being absent without enough leave to cover his time off August 25, 2016, and for calling and stating he would be tardy September 2, 2016, and then failing to report for work or call the employer to notify it he would not be at work. On November 8, 2016, the claimant received a five day suspension for insubordination after arguing with his supervisor about when he should be at work and arguing with another supervisor about when he should leave work.

#### **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 § 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.

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant was six minutes late November 22, 2016. The employer told him to clock in when he arrived but the claimant insisted on extensively arguing the incident of tardiness. When the employer finally stated it was done talking about the tardiness and instructed the claimant to go to work the claimant threatened the employer by saying, "You better quit talking to me if you know what's good for you." The claimant then walked off the job without notifying the employer he was leaving.

The claimant's actions were clearly insubordinate and inappropriate and a deliberate breach of his duties and obligations to the employer. This was not an isolated incident of poor judgment as the claimant had exhibited similar behavior in the past, including November 8, 2016, for which he received a five day suspension following the employer's progressive disciplinary policy.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

## **DECISION:**

The December 22, 2016, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he 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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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs