

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARC A STURGES**

Claimant

**APPEAL 17A-UI-10335-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INTERSTATE POWER & LIGHT COMPANY**

Employer

**OC: 09/17/17**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 5, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 26, 2017. Claimant participated. Employer participated through attorney Teresa Baumann and operations manager Alyson Mullin. Operations supervisor Joseph Young and labor relations manager Terry Liams appeared on behalf of the employer. Labor relations employee Beth Regan observed on behalf of the employer. Employer Exhibits 1, 2, 3, 4, 5, and 6 were admitted into evidence with no objection. The employer offered Employer Exhibit 7 into evidence. Claimant objected to Employer Exhibit 7 because it was irrelevant. Claimant's objection was overruled and Employer Exhibit 7 was admitted into evidence.

**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 as a floor operator from January 24, 2000, and was separated from employment on September 20, 2017, when he was discharged.

The employer has a written code of conduct. Employer Exhibit 6. The code of conduct requires employees to follow all applicable laws and to act with integrity. Employer Exhibit 6.

On August 31, 2017, during claimant's scheduled shift he recorded on the hourly rounds logsheet for the LFGC system readings of: .57 for the 9:00 a.m. and .58 for the 11:00 a.m. Employer Exhibit 4. Claimant was the employee responsible for recording the LFGC system readings on the hourly rounds logsheet. At 1:21 p.m. the process performance engineer notified Ms. Mullin that there was an issue with LFGC and the flow rate was too low at that time (1:21 p.m.). The process performance engineer also informed Ms. Mullin that the LFGC had not been operating for over three hours during claimant's shift (claimant's shift was from 6:00 a.m. to 2:00 p.m. on August 31, 2017). After receiving this information, Ms. Mullin contacted the

control room operator at 1:24 p.m. Ms. Mullin asked the control room operator if the LFGC was operating properly. The control room operator told Ms. Mullin that he had gotten information from the floor operator (claimant) that the LFGC was operating properly. Ms. Mullin had claimant go through the startup of the boiler, in particular the LFGC system. Claimant told Ms. Mullin he did rounds at 9:00 a.m. and 11:00 a.m. and there was flow in the LFGC system. Claimant then said he went down to the LFGC system around noon and the PLC screen showed it was in manual and off. Claimant then set the system to auto and put the system into service. Ms. Mullin started investigating the incident by going into the field to look at the alarm screens and reviewing other screens. See Employer Exhibit 5. The employer reviewed the report in Employer Exhibit 5, page 7, which showed from 9:00 a.m. to 1:22 p.m. on August 31, 2017 the flow for the LFGC was at zero and it first showed flow (between .4 and .5) at 1:22 p.m. The employer also reviewed the report in Employer Exhibit 5, page 5, which showed that there was zero flow for the LFGC between 9:00 a.m. and 1:22 p.m. on August 31, 2017. The first time flow started on the LFGC system was after 1:00 p.m. Employer Exhibit 5. Ms. Mullin discovered that the LFGC should have started at 7:30 a.m., but it did not start up until 1:22 p.m. Ms. Mullin also discovered that claimant did not complete the MATS Round Sheet on August 31, 2017. Employer Exhibit 3. The MATS round sheet is completed for emissions compliance. Claimant was responsible for filling out MATS Round Sheet. See Employer Exhibit 3. The LFGC portion has a column for first, second, and third shifts. Employer Exhibit 3. Claimant did not complete the checklist for first shift. Employer Exhibit 3. The MATS round sheet can be completed at any time during a floor operator's shift. Claimant was aware that he was required to complete this MATS Round Sheet before he ended his shift. If the MATS round sheet is not filled out correctly, it creates an environmental issue; the employer is not able to show its due diligence for federal omission regulations and it may result in fines or a possible shutdown. After claimant left his shift on August 31, 2017, Ms. Mullin confirmed that the system was registering the flow properly for the LFGC. Employer Exhibit 5. Ms. Mullin then determined that claimant's hourly logs were inaccurate and she scheduled an interview with claimant for September 8, 2017.

On September 8, 2017, Ms. Mullin interviewed claimant with a union steward present. Ms. Mullin asked claimant about what happened on August 31, 2017. Employer Exhibit 5. Claimant told Ms. Mullin that he recorded the flow readings from the LFGC system's PLC screen that is in the field. Ms. Mullin showed claimant the reports that there was no flow in the LFGC when he recorded flow for 9:00 a.m. and 11:00 a.m. Employer Exhibit 5. Claimant reiterated that there was flow on the PLC screen when he recorded .57 for the 9:00 a.m. reading and .58 for the 11:00 a.m. reading. Ms. Mullin also asked claimant why he did not complete the MATS round sheet on August 31, 2017. See Employer Exhibit 3. Claimant stated he was busy and he forgot to do it. Ms. Mullin informed claimant the employer was going to continue its investigation. Ms. Mullin continued the employer's investigation because claimant stated he was sure the PLC screen at the LFGC system showed there was flow and she wanted to make sure there were not any errors in the system. From September 8, 2017 to September 12, 2017, Ms. Mullin consulted with multiple people, including subject matter experts, to determine if there was a way the PLC screen would show flow when the other screens show no flow. Employer Exhibit 1. The employer determined that if the Historical Trend screen showed zero flow, then the PLC screen would have to show zero flow and claimant would not have seen .57 for the 9:00 a.m. reading and .58 for the 11:00 a.m. reading on August 31, 2017.

On September 14, 2017, Ms. Mullin met with claimant and a union steward again regarding the August 31, 2017 incident. Ms. Mullin informed claimant that she had spoken to several people and again asked how he got the flow numbers he recorded when all of the reports showed there was no flow at 9:00 a.m. and 11:00 a.m. Employer Exhibits 4 and 5. Claimant reiterated that the PLC screen showed flow. Claimant was then placed on paid administrative leave pending

further investigation. After the meeting, the employer continued to investigate to determine if the PLC screen would show a flow rate if there was no flow. The employer was unable to find a way that the PLC screen would show flow when there was no flow. The employer determined that if the PLC screen showed flow, then the historical trend screen would have shown flow.

After its investigation, the employer determined claimant was not telling the truth during the investigation and had falsified the hourly rounds logsheet on August 31, 2017. Employer Exhibit 1. On September 20, 2017, the employer discharged claimant. Employer Exhibit 1. Claimant was discharged for “fail[ing] to properly record the LFGC flow rate and fail[ing] to identify the equipment was not operating properly.” Employer Exhibit 1. The employer also discharged claimant for “provid[ing] false information while performing his rounds.” Employer Exhibit 1. The employer also discharged claimant after finding that he “appears to have provided false information when interviewed about [the incident.]” Employer Exhibit 1. The control room operator was disciplined for not performing due diligence following up with the alerts.

On February 22, 2016, the employer gave claimant a memorandum of disciplinary layoff (ten day suspension) for not properly verifying a value was locked out as he was required to do. Employer Exhibit 7. Claimant was warned that his job was in jeopardy. Employer Exhibit 7. Claimant was warned that he “must ensure all company documents are completed accurately and according to procedure.” Employer Exhibit 7. Claimant was informed that “[t]his memorandum will remain in the employees personnel file for a period of five (5) years.” Employer Exhibit 7.

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

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

It is the duty of an administrative law judge and the trier of fact in this case, 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibits that were admitted into evidence. This administrative law judge finds the employer’s version of events to be more credible than recollection of those events.

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).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). 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).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's rules requiring employees to follow all applicable laws and act with integrity is reasonable. Further, it is reasonable for the employer to expect its employees to complete all the forms/reports in a timely manner and to complete them accurately.

Claimant's argument that for the 9:00 a.m. and 11:00 a.m. readings the PLC screen showed flow at the LFGC system is not persuasive. The employer has presented substantial and credible evidence that on August 31, 2017, when claimant recorded that there was flow at the LFGC system on his hourly rounds logsheet for 9:00 a.m. and 11:00 a.m., there was not actually any flow. Employer Exhibits 4 and 5. Employer Exhibit 5, pages 5 and 7, clearly shows that there was no flow for the LFGC system on August 31, 2017 until after 1:00 p.m.

Claimant's argument that there must have been a system error is also not persuasive. After the incident was discovered, Ms. Mullin credibly testified that the employer spent multiple days investigating and consulting with subject matter experts to determine if the PLC screen would show flow when there was no flow. The employer determined if the PLC screen showed flow, then the reports in Employer Exhibit 5 would have shown flow; however, as indicated in Employer Exhibit 5 there was no flow in the LFGC system at 9:00 a.m. and 11:00 a.m. when claimant had recorded there was flow.

Furthermore, claimant was not subject to disparate treatment by the employer even though the control room operator was only disciplined and not discharged for this incident. Throughout the employer's investigation, claimant continually refused to acknowledge he recorded inaccurate information on his hourly rounds logsheet. During the employer's investigation, it interviewed claimant twice about what happened on August 31, 2017, and each time he told the employer what he recorded on his hourly rounds logsheet was correct, despite Employer Exhibit 5 clearly showing there was no flow at 9:00 a.m. and 11:00 a.m.

The employer has presented substantial and credible evidence that claimant did not accurately record the LFGC flow rate on August 31, 2017 for the 9:00 a.m. and 11:00 a.m. readings and he continually provided incorrect information when questioned by the employer. Employer Exhibit 1. Claimant's conduct was contrary to the best interests of the employer. This is disqualifying misconduct, even without prior warning. Benefits are denied.

**DECISION:**

The October 5, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

---

Jeremy Peterson  
Administrative Law Judge

---

Decision Dated and Mailed

jp/rvs