

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**MARK A HOWARD**  
Claimant

**TEMP ASSOCIATES BURLINGTON INC TE**  
Employer

**APPEAL 16A-UI-02838-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/24/16**  
**Claimant: Appellant (2)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The appellant/claimant filed an appeal from the February 25, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his discharge from employment for job-related misconduct. The parties were properly notified about the hearing. A telephone hearing was held on March 22, 2016. Claimant, Mark A. Howard, participated personally. Employer, Temp Associates Burlington Inc. TE, participated through Branch Manager Susan Watkins.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed from November 21, 2014 until January 15, 2016. The employer is a temporary employment agency. Claimant's last job assignment was at Nestle Purina and began on June 22, 2015. He was employed there full time as a lab assistant. His job duties consisted of transporting samples from the floor to the laboratory so that they could be tested. Candace Claeys was his direct supervisor at this job assignment.

On or about November 25, 2015, claimant discussed with Ms. Watkins the fact that he was missing out on opportunities to interview for other jobs and asked if he quit working for Nestle Purina if they would contest his unemployment. Ms. Watkins informed the claimant that he had paid time off available to use if he wanted to look for another job.

Claimant had another conversation with Ms. Watkins in December of 2015 about insurance when he found out that he had lost his Medicare coverage. Claimant had previously waived insurance coverage through this employer. See Exhibit 1.

On January 15, 2016, Ms. Claeys reported to Ms. Watkins that claimant asked her what it would take to get fired and if there was any chance he could be laid off. Claimant denied ever making these comments to Ms. Claeys. Ms. Claeys also reported to Ms. Watkins that the claimant's job performance had been declining, that two other co-workers had reported hearing claimant make similar comments about being laid off or fired, and they no longer wanted him placed with their company. Ms. Watkins telephoned the claimant that day and discharged him from employment. The discharge was because of the comments she believed he had made to his co-workers and Ms. Claeys as well as his poor work performance. There was no evidence presented to Ms. Watkins, besides Ms. Claeys comments that claimant's job performance had declined.

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

As a preliminary matter, I find that the claimant did not quit. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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).

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

(4) Report required. The claimant's statement and the 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.

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). 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). 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). Further, 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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

In this case there was no testimony as to how the claimant's job performance had declined, only that Ms. Claeys had reported it had. Claimant did not receive any disciplinary action against him and Ms. Claeys had never told the claimant that he was not performing well in his job duties at work.

Claimant gave a direct first-hand account of his conversation with Ms. Claeys on January 15, 2016. He did not make any comments to Ms. Claeys or any co-workers that he wanted to get laid off or fired. Ms. Watkin's only knowledge of the comments on January 15, 2016 came from Ms. Claeys' report. Ms. Claeys did not testify at the hearing. When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. IDHS*, 461 N.W.2d 603, 607 (Iowa App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*,

240 N.W.2d 682 (Iowa 1976). The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. No request to continue the hearing was made and no written statement of the Ms. Claeys was offered. Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events on January 15, 2016 is more credible than that of the employer.

The employer has failed to meet its burden of proof in establishing job-related misconduct that would disqualify the claimant from receiving benefits. As such, benefits are allowed.

**DECISION:**

The February 25, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

---

Dawn Boucher  
Administrative Law Judge

---

Decision Dated and Mailed

db/css